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A BRIEF

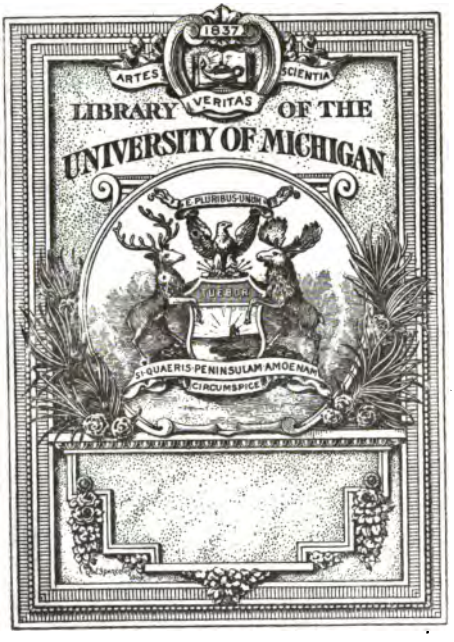
ON THE

Power of Congress to Coin Money

AND

Regulate the Value thereof.

FRED A. BAKER.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STATE OF MICHIGAN.

SUPREME COURT.

STEPHEN BALDWIN,
Complainant and Appellee.

vs.

FRED A. BAKER,
Defendant and Appellant.

BRIEF FOR APPELLANT.

ALBERT B. HALL,
Solicitor for Appellant.

FRED A. BAKER,
In pro. per.,
Of Counsel.

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STATE OF MICHIGAN.

SUPREME COURT.

STEPHEN BALDWIN,
Complainant and Appellee,

vs.

FRED A. BAKER,
Defendant and Appellant.

BRIEF FOR APPELLANT.

STATEMENT OF CASE.

The constitutional provisions to be considered in this case are as follows:

CONSTITUTIONAL PROVISIONS:

"The Congress shall have power" * * *

"To borrow money on the credit of the United States." * * *

"To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures."

(Constitution U. S., Art. I., Sec. 8.)

"No state shall * * * coin money; emit bills of credit; make anything but gold and silver coin a tender in

payment of debts; pass any * * * law impairing the obligation of contracts."

(Constitution U. S., Art. I., Sec. 10.)

"No person * * * shall be deprived of life, liberty or property without due process of law."

(Amendments Constitution U. S., Art. V.)

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

(Amendments Constitution U. S., Art. X.)

ACTS OF CONGRESS.

The statutory provisions involved in this case are as follows:

APPROVED APRIL 2, 1792.

(1 U. S. Stat., 246.)

Sec. 9. "That there shall be from time to time struck and coined at the said Mint, coins of gold, silver, and copper, of the following denominations, values and descriptions, viz.: Eagles—each to be of the value of ten dollars or units, and to contain two hundred and forty-seven grains and four eighths of a grain of pure, or two hundred and seventy grains of standard gold. Half Eagles—each to be of the value of five dollars, and to contain one hundred and twenty-three grains and six-eighths of a grain of pure or one hundred and thirty-five grains of standard gold. Quarter Eagles—each to be of the value of two dollars and a half dollar, and to contain sixty-one grains and seven-eighths of a grain of pure, or sixty-seven grains and four-eighths of a grain of standard gold. Dollars or Units—each to be of the value of a Spanish Milled dollar

as the same is now current, and to contain three hundred and seventy-one grains and four-sixteenth part of a grain of pure, or four hundred and sixteen grains of standard silver. Half Dollars—each to be of half the value of the dollar or unit, and to contain one hundred and eighty-five grains and ten-sixteenth parts of a grain of pure, or two hundred and eight grains of standard silver. Quarter Dollars—each to be of one-fourth the value of the dollar or unit, and to contain ninety-two grains and thirteen-sixteenth parts of a grain of pure, or one hundred and four grains of standard silver. Dismes—each to be of the value of one-tenth of a dollar or unit, and to contain thirty-seven grains and two-sixteenth parts of a grain of pure, or forty-one grains and three-fifth parts of a grain of standard silver. Half Dismes—each to be of the value of one-twentieth of a dollar, and to contain eighteen grains and nine-sixteenth parts of a grain of pure, or twenty grains and four-fifth parts of a grain of standard silver. Cents—each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper. Half Cents—each to be of the value of half a cent, and to contain five penny-weights and half a penny weight of copper."

Sec. 11. "That the proportional value of gold to silver in all coins which shall by law be current as money within the United States, shall be as fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen pounds weight of pure silver shall be of equal value in all payments, with one pound weight of pure gold, and so in proportion as to any greater or less quantities of the respective metals."

Sec. 14. "That it shall be lawful for any person or persons to bring to the said Mint gold and silver bullion, in order to their being coined; and that the bullion so brought shall be there assayed and coined as speedily as

may be after the receipt thereof, and that free of expense to the person or persons by whom the same shall have been brought." * * *

Sec. 16. "That all the gold and silver coins which shall have been struck at, and issued from the said Mint, shall be a lawful tender in all payments whatsoever, those of full weight according to the respective values herein before declared, and those of less than full weight at values proportional to their respective weights."

Sec. 20. "That the money of account of the United States shall be expressed in dollars or units, dismes, or tenths, cents or hundredths, and milles or thousandths, a dismes being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thousandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation."

APPROVED MAY 8, 1792.
(1 U. S. Stat., 283.)

Sec. 1. "That the Director of the Mint, with the approbation of the President of the United States, be authorized to contract for and purchase a quantity of copper, not exceeding one hundred and fifty tons, and that the said Director, as soon as the needful preparations shall be made, cause the copper by him purchased to be coined at the Mint into cents and half cents, pursuant to 'the act establishing a Mint, and regulating the coins of the United States;' and that the said cents and half cents, as they shall be coined, be paid into the Treasury of the United States, thence to issue into circulation."

APPROVED JUNE 28, 1834.
(4 U. S. Stat., 699.)

Sec. 1. "That the gold coins of the United States shall contain the following quantities of metal, that is to say:

Each eagle shall contain two hundred and thirty-two grains of pure gold, and two hundred and fifty-eight grains of standard gold; each half eagle one hundred and sixteen grains of pure gold, and one hundred and twenty-nine grains of standard gold; each quarter eagle shall contain fifty-eight grains of pure gold, and sixty-four and a half grains of standard gold; every such eagle shall be of the value of ten dollars; every such half eagle shall be of the value of five dollars; and every such quarter eagle shall be of the value of two dollars and fifty cents; and the said gold coins shall be receivable in all payments, when of full weight, according to their respective values; and when of less than full weight, at less values, proportioned to their respective actual weights.

Sec. 3. "That all gold coins of the United States, minted anterior to the thirty-first day of July next, shall be receivable in all payments at the rate of ninety-four and eight-tenths of a cent per pennyweight."

APPROVED JAUNARY 18, 1837.
(5 U. S. Stat., 136.)

Sec. 8. "That the standard for both gold and silver coins of the United States shall hereafter be such, that of one thousand parts by weight, nine hundred shall be of pure metal, and one hundred of alloy; and the alloy of the silver coins shall be of copper; and the alloy of the gold coins shall be of copper and silver, provided that the silver do not exceed one-half of the whole alloy."

Sec. 9. "That of the silver coins, the dollar shall be the weight of four hundred and twelve and one-half grains; the half dollar of the weight of two hundred and six and one-fourth grains; the quarter dollar of the weight of one hundred and three and one-eighth grains; the dime or tenth part of a dollar, of the weight of forty-one and a quarter grains; and the half dime, or twentieth part of

a dollar, of the weight of twenty grains, and five-eighths of a grain. And that dollars, half dollars, and quarter dollars, dimes, and half dimes, shall be legal tenders of payment according to their nominal value, for any sums whatever."

Sec. 10. "That of the gold coins, the weight of the eagle shall be two hundred and fifty-eight grains; that of the half eagle one hundred and twenty-nine grains; and that of the quarter eagle sixty-four and one half grains. And that for all sums whatever, the eagle shall be a legal tender of payment for ten dollars; the half eagle for five dollars; and the quarter eagle for two and a half dollars."

Sec. 11. "That the silver coins heretofore issued at the Mint of the United States, and the gold coins issued since the thirty-first day of July, one thousand eight hundred and thirty-four, shall continue to be legal tenders of payment for their nominal values, on the same terms as if they were of the coinage provided for by this act."

Sec. 12. "That of the copper coins, the weight of the cent shall be one hundred and sixty-eight grains, and the weight of the half cent eighty-four grains. And the cent shall be considered of the value of one-hundredth part of a dollar, and the half cent of the value of one two-hundredth part of a dollar."

Sec. 33. "That copper bullion shall be purchased for the Mint, from time to time, by the treasurer, under instructions from the director; that the cost shall be paid from the fund hereinafter provided for; and that the copper bullion shall be of good quality, and in form of planchets fit for passing at once into the hands of the chief coiner."

Sec. 35. "That it shall be the duty of the treasurer of the Mint to deliver the copper coins, in exchange for their legal equivalent in other money, to any persons who shall apply for them: Provided, That the sum asked for be not

less than a certain amount, to be determined by the Director, and that it be not so great as, in his judgment, to interfere with the capacity of the Mint to supply other applicants."

Sec. 37. "That the money received by the treasurer in exchange for copper coins shall form a fund in his hands, which shall be used to purchase copper planchets, and to pay the expense of transportation of copper coins; and that if there be a surplus, the sum shall be appropriated to defray the contingent expenses of the Mint."

APPROVED MARCH 3, 1849.
(9 U. S. Stat., 397.)

Sec. 1. "That there shall be, from time to time, struck and coined at the Mint of the United States and the branches thereof, conformably in all respects to law (except that on the reverse of the gold dollar the figure of the eagle shall be omitted), and conformably in all respects to the standard for gold coins now established by law, coins of gold of the following denominations and values, viz: Double eagles, each to be of the value of twenty dollars, or units, and gold dollars, each to be of the value of one dollar, or unit."

Sec. 2. "That for all sums whatever, the double eagle shall be a legal tender for twenty dollars and the gold dollar shall be a legal tender for one dollar."

Sec. 4. "That, in adjusting the weights of gold coins henceforward, the following deviations from the standard weight shall not be exceeded in any of the single pieces—namely, in the double eagle, the eagle, and the half eagle, one half of a grain, and in the quarter eagle and gold dollar, one quarter of a grain; and that in weighing a large number of pieces together, when delivered from the chief coiner to the treasurer, and from the treasurer to the depositors, the deviation from the standard weight shall not

exceed three pennyweights in one thousand double eagles; two pennyweights in one thousand eagles; one and one-half pennyweights in one thousand half eagles; one pennyweight in one thousand quarter eagles; and one-half of a pennyweight in one thousand gold dollars."

APPROVED MARCH 3, 1851.
(9 U. S. Stat., 591.)

Sec. 11. "That from and after the passage of this act, it shall be lawful to coin at the Mint of the United States and its branches, a piece of the denomination and legal value of three cents, or three-hundredths of a dollar, to be composed of three-fourths silver and one-fourth copper, and to weigh twelve grains and three-eights of a grain; that the said coin shall bear such devices as shall be conspicuously different from those of the other silver coins, and of the gold dollar, but having the inscription United States of America, and its denomination and date; and that it shall be a legal tender in payment of debts for all sums of thirty cents and under. And that no ingots shall be used for the coinage of the three cent pieces herein authorized, of which the quality differs more than five-thousandths from the legal standard; and that, in adjusting the weight of the said coin, the following deviations from the standard weight shall not be exceeded, namely, one-half of a grain in the single piece, and one pennyweight in a thousand pieces."

APPROVED FEBRUARY 21, 1853.
(10 U. S. Stat., 160.)

Section 1. "That from and after the first day of June, eighteen hundred and fifty-two, (three) the weight of the half dollar or piece of fifty cents shall be one hundred and ninety-two grains, and the quarter dollar, dime, and half dime, shall be, respectively, one-half, one-fifth, and one-tenth of the weight of said half dollar."

Sec. 2. "That the silver coins issued in conformity with the above section, shall be legal tenders in payment of debts for all sums not exceeding five dollars."

Sec. 3. "That in order to procure bullion for the requisite coinage of the subdivisions of the dollar authorized by this act, the treasurer of the Mint shall, with the approval of the director, purchase such bullion with the bullion fund of the Mint. He shall charge himself with the gain arising from the coinage of such bullion into coins of a nominal value exceeding the intrinsic value thereof, and shall be credited with the difference between such intrinsic value and the price paid for said bullion, and with the expense of distributing said coins as hereinafter provided. The balances to his credit, or the profit of said coinage, shall be, from time to time, on a warrant of the Director of the Mint, transferred to the account of the Treasury of the United States."

Sec. 4. "That such coins shall be paid out at the Mint, in exchange for gold coins at par, in sums not less than one hundred dollars; and it shall be lawful, also, to transmit parcels of the same from time to time to the assistant treasurers, depositaries, and other officers of the United States, under general regulations, proposed by the Director of the Mint, and approved by the Secretary of the Treasury: Provided, however, That the amount coined into quarter dollars, dimes, and half dimes, shall be regulated by the Secretary of the Treasury."

Sec. 5. "That no deposits for coinage into the half dollar, quarter dollar, dime and half dime, shall hereafter be received, other than those made by the treasurer of the Mint, as herein authorized, and upon account of the United States."

Sec. 7. "That from time to time there shall be struck and coined at the Mint of the United States and the branches thereof, conformably in all respects to law and

conformably in all respects to the standard of gold coins now established by law, a coin of gold of the value of three dollars or units." * * *

APPROVED MARCH 3, 1853.
(10 U. S. Stat., 188, 189.)

Sec. 7. * * * "And that hereafter the three-cent coin now authorized by law shall be made of the weight of three-fiftieths of the weight of the half dollar, as provided in said act, and of the same standard of fineness."

APPROVED FEBRUARY 21, 1857.
(11 U. S. Stat., 163.)

Sec. 4. "That from and after the passage of this act, the standard weight of the cent coined at the Mint shall be seventy-two grains, or three-twentieths of one ounce troy, with no greater deviation than four grains in each piece; and said cent shall be composed of eighty-eight per centum of copper and twelve per centum of nickel, of such shape and device as may be fixed by the Director of the Mint, with the approbation of the Secretary of the Treasury; and the coinage of the half cent shall cease."

Sec. 5. "That the treasurer of the Mint, under the instruction of the Secretary of the Treasury, shall, from time to time, purchase from the bullion fund of the Mint the materials necessary for the coinage of such cent piece, and transfer the same to the proper operative officers of the Mint to be manufactured and returned in coin. And the laws in force relating to the Mint and the coinage of the precious metals, and in regard to the sale and distribution of the copper coins, shall, so far as applicable, be extended to the coinage herein provided for: Provided, That the net profits of said coinage, ascertained in like manner as is prescribed in the second section of this act, shall be transferred to the Treasury of the United States."

APPROVED APRIL 22, 1864.
(13 U. S. Stat., 54.)

Sec. 1. "That from and after the passage of this act, the standard weight of the cent coined at the mint of the United States shall be forty-eight grains, or one-tenth of one ounce troy; and said cent shall be composed of ninety-five per centum of copper, and five per centum of tin and zinc, in such proportions as shall be determined by the Director of the Mint; and there shall be, from time to time, struck and coined at the mint a two-cent piece, of the same composition, the standard weight of which shall be ninety-six grains, or one-fifth of one ounce troy, with no greater deviation than four grains to each piece of said cent and two-cent coins; and the shape, mottoes, and devices of said coins shall be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury; and the laws now in force relating to the coinage of cents and providing for the purchase of material and prescribing the appropriate duties of the officers of the mint and the Secretary of the Treasury be, and the same are hereby extended to the coinage herein provided for."

Sec. 4. "That the said coins shall be a legal tender in any payment, the one-cent coin to the amount of ten cents, and the two-cent coin to the amount of twenty cents; and it shall be lawful to pay out said coins in exchange for the lawful currency of the United States, (except cents or half cents issued under former acts of Congress,) in suitable sums, by the treasurer of the Mint, and by such other depositaries as the Secretary of the Treasury may designate, under general regulations proposed by the director of the Mint and approved by the Secretary of the Treasury; and the expenses incident to such exchange, distribution and transmission may be paid out of the profits of said coinage, and the net profits of said coinage ascer-

tained in like manner as is prescribed in the second section of the act to which this is a supplement, shall be transferred to the Treasury of the United States."

APPROVED MARCH 3, 1865.
(13 U. S. Stat., 517.)

Sec. 1. "That as soon as practicable after the passage of this act, there shall be coined at the Mint of the United States a three-cent piece, composed of copper and nickel in such proportions, not exceeding twenty-five per centum of nickel, as shall be determined by the Director of the Mint, the standard weight of which shall be thirty grains, with no greater deviation than four grains to each piece, and the shape, mottoes, and devices of said coin shall be determined by the Director of the Mint, with the approval of the Secretary of the Treasury. And the laws now in force relating to the coinage of cents, and providing for the purchase of material and prescribing the appropriate duties of the officers of the Mint, and of the Secretary of the Treasury, be, and the same are hereby, extended to the coinage herein provided for."

Sec. 3. "That said coin shall be a legal tender in any payment to the amount of sixty cents." * * *

Sec. 6. "That the one and two-cent coins of the United States shall not be a legal tender for any payment exceeding four cents in amount." * * *

APPROVED MAY 16, 1866.
(14 U. S. Stat., 47.)

Sec. 1. "That, so soon as practicable after the passage of this act, there shall be coined at the Mint of the United States a five-cent piece composed of copper and nickel, in such proportions, not exceeding twenty-five per centum of nickel, as shall be determined by the Director of the Mint, the standard weight of which shall be seventy-seven and sixteen-hundredths grains, with no greater deviation than

two grains to each piece; and the shape, mottoes and devices of said coin shall be determined by the Director of the Mint, with the approval of the Secretary of the Treasury; and the laws now in force relating to the coinage of cents, and providing for the purchase of material, and describing the appropriate duties of the officers of the Mint and the Secretary of the Treasury, be, and the same are hereby, extended to the coinage herein provided for."

Sec. 3. "That said coin shall be a legal tender in any payment to the amount of one dollar."

Sec. 5. "That it shall be lawful for the Treasurer and the several assistant treasurers of the United States to redeem in national currency, under such rules and regulations as may be prescribed by the Secretary of the Treasury, the coin herein authorized to be issued, when presented in sums of not less than one hundred dollars."

APPROVED MARCH 3, 1871.
(16 U. S. Stat., 580.)

Sec. 1. "That the Secretary of the Treasury is hereby authorized and required to redeem in lawful money, under such rules and regulations as he may from time to time prescribe, all copper, bronze, copper-nickel, and base-metal coinage of every kind heretofore authorized by law, when presented in sums not less than twenty dollars; and whenever under this authority these coins are presented for redemption in such quantity as to show the amount outstanding to be redundant, the Secretary of the Treasury is authorized to discontinue or diminish the manufacture and issue of such coinage until otherwise ordered by him."

APPROVED FEBRUARY 12, 1873.
(17 U. S. Stat., 424.)

And revised and re-enacted in the act approved June 22, 1874, to revise and consolidate the statutes of the United States in force on the first day of December, 1873:

REVISED STATUTES UNITED STATES.

Sec. 3511. "The gold coins of the United States shall be a one-dollar piece, which, at the standard weight of twenty-five and eight-tenths grains, shall be the unit of value; a quarter eagle, or two and a half dollar piece; a three-dollar piece; a half eagle, or five-dollar piece; an eagle or ten-dollar piece; and a double eagle or twenty-dollar piece. And the standard weight of the gold dollar shall be twenty-five and eight-tenths grains; of the quarter eagle, or two and a half dollar piece, sixty-four and a half grains; of the three-dollar piece, seventy-seven and four-tenths grains; of the half eagle, or five-dollar piece, one hundred and twenty-nine grains; of the eagle, or ten-dollar piece, two hundred and fifty-eight grains; of the double eagle, or twenty-dollar piece, five hundred and sixteen grains."

Sec. 3512. "Any gold coins in the Treasury of the United States, when reduced in weight by natural abrasion more than one-half of one per centum below the standard weight prescribed by law, shall be recoined."

Sec. 3513. "Silver coins of the United States shall be a trade dollar, a half dollar, or fifty-cent piece, a quarter dollar, or twenty-five cent piece, a dime, or ten-cent piece; and the weight of the trade dollar shall be four hundred and twenty grains troy; the weight of the half dollar shall be twelve grams and one-half of a gram; the quarter dollar and the dime shall be, respectively, one-half and one-fifth of the weight of the said half dollar."

Sec. 3514. "The standard for both gold and silver coins of the United States shall be such that of one thousand parts by weight, nine hundred shall be of pure metal and one hundred of alloy. The alloy of the silver coins shall be of copper. The alloy of the gold coins shall be of cop-

per, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy."

Sec. 3515. "The minor coins of the United States shall be a five-cent piece, a three-cent piece, and a one-cent piece. The alloy for the five and three-cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel. The alloy of the one-cent piece shall be ninety-five per centum of copper and five per centum of tin and zinc, in such proportions as shall be determined by the Director of the Mint. The weight of the piece of five cents shall be seventy-seven and sixteen-hundredths grains troy; of the three-cent piece, thirty grains; and of the one-cent piece, forty-eight grains."

Sec. 3516. "No coins, either of gold, silver, or minor coinage, shall hereafter be issued from the Mint other than those of the denominations, standards, and weights set forth in this Title."

Sec. 3520. "Any owner of silver bullion may deposit the same at any mint, to be formed into bars, or into dollars of the weight of four hundred and twenty grains troy, designated in this Title as trade dollars, and no deposit of silver for other coinage shall be received. Silver bullion contained in gold deposits, and separated therefrom, may, however, be paid for in silver coin, at such valuation as may be, from time to time, established by the Director of the Mint."

Sec. 3524. "The charge for converting standard gold bullion into coin shall be one-fifth of one per centum. The charges for converting standard silver into trade dollars for melting and refining when bullion is below standard, for toughening when metals are contained in it which render it unfit for coinage, for copper used for alloy when the bullion is above standard, for separating the gold and silver when these metals exist together in the bullion, and for the preparation of bars, shall be fixed,

from time to time, by the Director, with the concurrence of the Secretary of the Treasury, so as to equal but not exceed, in their judgment, the actual average cost to each mint and assay office of the material, labor, wastage, and use of machinery employed in each of the cases aforementioned."

Sec. 3526. "In order to procure bullion for the silver coinage authorized by this Title, the superintendents, with the approval of the Director of the Mint, as to price, terms, and quantity, shall purchase such bullion with the bullion fund. The gain arising from the coinage of such silver bullion into coin of a nominal value exceeding the cost thereof shall be credited to a special fund denominated the silver-profit fund. This fund shall be charged with the wastage incurred in the silver coinage, and with the expense of distributing such silver coins as hereinafter provided. The balance to the credit of this fund shall be from time to time, and at least twice a year, paid into the Treasury of the United States."

Sec. 3527. "Silver coins other than the trade dollar shall be paid out at the several mints, and at the assay office in New York City, in exchange for gold coins at par, in sums not less than one hundred dollars. It shall be lawful, also, to transmit parcels of the same, from time to time, to the assistant treasurers, depositaries, and other officers of the United States, under general regulations proposed by the Director of the Mint, and approved by the Secretary of the Treasury. Nothing herein contained shall, however, prevent the payment of silver coins, at their nominal value, for silver parted from gold, as provided in this Title, or for change less than one dollar in the settlement for gold deposits. But for two years after the twelfth day of February, eighteen hundred and seventy-three, silver coins shall be paid at the mint of Philadelphia and the assay office in New York City, for silver

bullion purchased for coinage, under such regulations as may be prescribed by the Director of the Mint and approved by the Secretary of the Treasury."

Sec. 3528. "For the purchase of metal for the minor coinage authorized by this Title, a sum not exceeding fifty thousand dollars in lawful money of the United States shall be transferred by the Secretary of the Treasury to the credit of the superintendent of the Mint at Philadelphia, at which establishment only, until otherwise provided by law, such coinage shall be carried on. The superintendent, with the approval of the Director of the Mint as to price, terms, and quantity, shall purchase the metal required for such coinage by public advertisement, and the lowest and best bid shall be accepted, the fineness of the metals to be determined on the Mint assay. The gain arising from the coinage of such metals into coin of a nominal value, exceeding the cost thereof, shall be credited to the special fund denominated the minor coinage profit fund; and this fund shall be charged with the wastage incurred in such coinage, and with the cost of distributing said coins as hereinafter provided. The balance remaining to the credit of this fund, and any balance of profits accrued from minor coinage under former acts, shall be, from time to time, and at least twice a year, covered into the Treasury."

Sec. 3529. "The minor coins authorized by this Title may, at the discretion of the Director of the Mint, be delivered in any of the principal cities and towns of the United States, at the cost of the Mint, for transportation, and shall be exchangeable at par at the Mint in Philadelphia, at the discretion of the superintendent, for any other coins of copper, bronze, or copper-nickel heretofore authorized by law. It shall be lawful for the Treasurer and the several assistant treasurers and depositories of the United States to redeem, in lawful money, under such

rules as may be prescribed by the Secretary of the Treasury, all copper, bronze, and copper-nickel coins authorized by law when presented in sums of not less than twenty dollars. Whenever, under this authority, these coins are presented for redemption in such quantity as to show the amount outstanding to be redundant, the Secretary of the Treasury is authorized and required to direct that such coinage shall cease until otherwise ordered by him."

Sec. 3535. "In adjusting the weights of the gold coins, the following deviations shall not be exceeded in any single piece: In the double eagle and the eagle, one-half of a grain; in the half eagle, the three-dollar piece, the quarter eagle, and the one-dollar piece, one-fourth of a grain. And in weighing a number of pieces together, when delivered by the coiner to the superintendent, and by the superintendent to the depositor, the deviation from the standard weight shall not exceed one-hundredth of an ounce in five thousand dollars in double eagles, eagles, half eagles, or quarter eagles, in one thousand three-dollar pieces, and in one thousand one-dollar pieces."

Sec. 3536. "In adjusting the weight of the silver coins the following deviations shall not be exceeded in any single piece: In the dollar, the half and quarter dollar, and in the dime, one and one-half grains. And in weighing (a) large number of pieces together, when delivered by the coiner to the superintendent, and by the superintendent to the depositor, the deviations from the standard weight shall not exceed two-hundredths of an ounce in one thousand dollars, half dollars, or quarter dollars, and one-hundredths of an ounce in one thousand dimes."

Sec. 3537. "In adjusting the weight of the minor coins provided by this Title, there shall be no greater deviation allowed than three grains for the five-cent piece and two grains for the three and one-cent pieces."

Sec. 3563. "The money of account of the United States shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, a mill the thousandth part of a dollar; and all accounts in the public offices and all proceedings in the courts shall be kept and had in conformity to this regulation."

Sec. 3564. "The value of foreign coin as expressed in money of account of the United States shall be that of the pure metal of such coin of standard value; and the value of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

Sec. 3584. "No foreign gold or silver coins shall be a legal tender in payment of debts."

Sec. 3585. "The gold coins of the United States shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight."

Sec. 3586. "The silver coins of the United States shall be a legal tender at their nominal value for any amount not exceeding five dollars in any one payment."

Sec. 3587. "The minor coins of the United States shall be a legal tender at their nominal value for any amount not exceeding twenty-five cents in any one payment."

APPROVED JANUARY 14, 1875.
(18 U. S. Stat., 296.)

Sec. 2. "That so much of section three thousand five hundred and twenty-four of the Revised Statutes of the

United States as provides for a charge of one-fifth of one per centum for converting standard gold bullion into coin is hereby repealed; and hereafter no charge shall be made for that service."

Sec. 3. * * * "And on and after the first day of January, anno Domini, eighteen hundred and seventy-nine, the Secretary of the Treasury shall redeem, in coin, the United States legal-tender notes then outstanding, on their presentation for redemption at the office of the assistant treasurer of the United States in the City of New York, in sums of not less than fifty dollars. And to enable the Secretary of the Treasury to prepare and provide for the redemption in this act authorized and required, he is authorized to use any surplus revenues, from time to time, in the Treasury not otherwise appropriated, and to issue, sell and dispose of, at not less than par, in coin, either of the descriptions of bonds of the United States described in the act of Congress approved July fourteenth, eighteen hundred and seventy, entitled 'An act to authorize the refunding of the national debt,' with like qualities, privileges, and exemptions, to the extent necessary to carry this act into full effect, and to use the proceeds thereof for the purposes aforesaid. And all provisions of law inconsistent with the provisions of this act are hereby repealed."

APPROVED JULY 22, 1876. (Joint Resolution.)
(19 U. S. Stat., 215.)

Sec. 2. "That the trade dollar shall not hereafter be a legal tender, and the Secretary of the Treasury is hereby authorized to limit from time to time the coinage thereof to such an amount as he may deem sufficient to meet the export demand for the same."

Sec. 3. "That in addition to the amount of subsidiary silver coin authorized by law to be issued in redemption

of the fractional currency it shall be lawful to manufacture at the several mints, and issue through the Treasury and its several offices, such coin, to an amount, that, including the amount of subsidiary silver coin and of fractional currency outstanding, shall, in the aggregate, not exceed, at any time fifty million dollars."

Sec. 4. "That the silver bullion required for the purposes of this resolution shall be purchased, from time to time, at market rate, by the Secretary of the Treasury, with any money in the Treasury not otherwise appropriated; but no purchase of bullion shall be made under this resolution when the market-rate for the same shall be such as will not admit for the coinage and issue, as herein provided, without loss to the Treasury; and any gain or seigniorage arising from this coinage shall be accounted for and paid into the Treasury, as provided under existing laws relative to the subsidiary coinage: rovided, That the amount of money at any one time invested in such silver bullion, exclusive of such resulting coin shall not exceed two hundred thousand dollars."

PASSED OVER THE VETO OF PRESIDENT HAYES, FEBRUARY 28, 1878.

(20 U. S. Stat., 25.)

Sec 1. "That there shall be coined, at the several mints of the United States, silver dollars of the weight of four hundred and twelve and a half grains troy of standard silver, as provided in the act of January eighteenth, eighteen hundred thirty-seven, on which shall be the devices and superscriptions provided by said act; which coins, together with all silver dollars heretofore coined by the United States, of like weight and fineness, shall be a legal tender at their nominal value, for all debts and dues, public and private, except where otherwise expressly stipulated in the contract. And the Secretary of the Treas-

ury is authorized and directed to purchase, from time to time, silver bullion, at the market price thereof, not less than two million dollars' worth per month, nor more than four million dollars' worth per month, and cause the same to be coined monthly, as fast as so purchased, into such dollars; and a sum sufficient to carry out the foregoing provision of this act is hereby appropriated out of any money in the Treasury not otherwise appropriated. And any gain or seigniorage arising from this coinage shall be accounted for and paid into the Treasury, as provided under existing laws relative to the subsidiary coinage: Provided, That the amount of money at any time invested in such silver bullion, exclusive of such resulting coin, shall not exceed five million dollars: And provided further, That nothing in this act shall be construed to authorize the payment in silver of certificates of deposit issued under the provisions of section two hundred and fifty-four of the Revised Statutes."

Sec. 2. "That immediately after the passage of this act, the President shall invite the governments of the countries composing the Latin Union, so-called, and of such other European nations as he may deem advisable, to join the United States in a conference to adopt a common ratio between gold and silver, for the purpose of establishing, internationally, the use of bi-metallic money, and securing fixity of relative value between those metals; such conference to be held at such place, in Europe, or in the United States, at such time within six months, as may be mutually agreed upon by the executives of the governments joining in the same, whenever the governments so invited, or any three of them, shall have signified their willingness to unite in the same.

"The President shall, by and with the advice and consent of the Senate, appoint three commissioners, who shall attend such conference on behalf of the United

States, and shall report the doings thereof to the President, who shall transmit the same to Congress.

"Said commissioners shall each receive the sum of two thousand five hundred dollars and their reasonable expenses, to be approved by the Secretary of State; and the amount necessary to pay such compensation and expenses is hereby appropriated out of any money in the Treasury not otherwise appropriated."

Sec. 3. "That any holder of the coin authorized by this act may deposit the same with the Treasurer or any assistant treasurer of the United States, in sums not less than ten dollars and receive therefor certificates of not less than ten dollars each, corresponding with the denominations of the United States notes. The coin deposited for or representing the certificates shall be retained in the Treasury for the payment of the same on demand. Said certificates shall be receivable for customs, taxes, and all public dues, and, when so received, may be reissued."

Sec. 4. "All acts and parts of acts inconsistent with the provisions of this act are hereby repealed." [1]

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1 The veto message of President Hayes is as follows:

"Executive Mansion, February 28, 1878.

To the House of Representatives:

After a very careful consideration of House Bill No. 1093, entitled, 'An act to authorize the coinage of the standard silver dollar and to restore its legal tender character,' I feel compelled to return it to the House of Representatives, in which it originated, with my objections to its passage.

Holding the opinion, which I expressed in my annual message, that 'neither the interests of the government nor of the People of the United States would be promoted by disparaging silver as one of the two precious metals which furnish the coinage of the world, and that legislation which looks to the volume of intrinsic money to as full a measure of both metals as their relative commercial values will permit would be neither unjust nor inexpedient,' it has been my earnest desire to concur with Congress in the adoption of such measures to increase the silver coinage of the country as would not impair the obligation of contracts, either public or private, nor injuriously effect the public credit. It is only upon the conviction that this bill does not meet these essential requirements that I feel it my duty to withhold from it my approval.

My present official duty as to this bill permits only an attention to the specific objections to its passage which seem to me so important as to justify me in asking from the wisdom and duty of Congress that further consideration of the bill for which the Constitution has in such cases provided.

The bill provides for the coinage of silver dollars of the weight of 412½ grains each, of standard silver, to be a legal tender at their nominal value for all debts and dues, public and private, except where otherwise stipulated in the contract. It is well known that the market value of that number of grains of standard silver during the past year has been from 90 to 92 cents as compared with the standard gold dollar. Thus the silver dollar authorized by this bill is worth 8 to 10 per cent less than it purports

APPROVED JUNE 9, 1879.
(21 U. S. Stat., 7.)

Sec. 1. "That the holder of any of the silver coins of the United States of smaller denominations than one dollar, may, on presentation of the same in sums of twenty dollars or any multiple thereof at the office of the Treasurer or any Assistant Treasurer of the United States, receive therefor lawful money of the United States."

Sec. 3. "That the present silver coins of the United States of smaller denominations than one dollar shall hereafter be a legal tender in all sums not exceeding ten dollars in full payment of all dues, public and private."

APPROVED AUGUST 4, 1886.
(24 U. S. Stat., 227.)

"And the Secretary of the Treasury is hereby authorized and required to issue silver certificates in denominations of one, two and five dollars, and the silver certificates herein authorized shall be receivable, redeemable and payable in like manner and for like purposes as is

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to be worth, and is made a legal tender for the debts contracted when the law did not recognize such coins as lawful money.

The right to pay duties in silver or in certificates for silver deposits will, when they are issued in sufficient amount to circulate, put an end to the receipt of revenue in gold, and thus compel the payment in silver for both the principal and interest of the public debt. One billion, one hundred and forty-three million, four hundred and ninety-three thousand four hundred dollars of the bonded debt now outstanding was issued prior to February, 1873, when the silver dollar was unknown in circulation in this country, and was only a convenient form of silver bullion for exportation; $583,440,350 of the funded debt has been issued since February, 1873, when gold alone was the coin for which the bonds were sold, and gold alone was the coin in which both parties to the contract understood that the bonds would be paid. These markets entered into the markets of the world. They were paid for in gold when silver had greatly depreciated, and when no one would have bought them if it had been understood that they would be paid in silver. The sum of $225,000,000 of these bonds has been sold during my administration for gold coin, and the United States received the benefit of these sales by a reduction of the rate of interest to 4 per cent. During the progress of these sales a doubt was suggested as to the coin in which the payment of these bonds would be made. The public announcement was thereupon authorized that it was 'not to be anticipated that any future legislation of Congress or any action of any department of the government would sanction or tolerate the redemption of the principal of these bonds of the payment of the interest thereon in coin of less value than the coin authorized by law at the time of the issue of the bonds, being the coin exacted by the government in exchange for the same.' In view of these facts it will be justly regarded as a grave breach of the public faith to undertake to pay these bonds, principal or interest, in silver coin worth in the market less than the coin received for them.

provided for silver certificates by the act of February twenty-eighth, eighteen hundred and seventy-eight, entitled 'An Act to authorize the coinage of the standard silver dollar and to restore its legal tender character,' and denominations of one, two and five dollars may be issued in lieu of silver certificates of larger denominations in the Treasury or in exchange therefor upon presentation by the holders, and to that extent said certificates of larger denominations shall be cancelled and destroyed."

APPROVED JULY 14, 1890.
(26 U. S. Stat., 289.)

Sec. 1. "That the Secretary of the Treasury is hereby directed to purchase, from time to time, silver bullion to the aggregate amount of four million five hundred thousand ounces, or so much thereof as may be offered in each month, at the market price thereof, not exceeding one dollar for three hundred and seventy-one and twenty-five hundredths grains of pure silver, and to issue in payment for such purchases of silver bullion Treasury notes of the

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It is said that the silver dollar made a legal tender by this bill will under this obligation be equivalent in value to the gold dollar. Many supporters of the bill believe this, and would not justify an attempt to pay, either public or private, in coin in inferior value to the money of the world. The capital defect of the bill is that it contains no provision protecting from its operation preexisting debts in case the coinage which it creates shall be of less value than that which was the sole legal tender when they were contracted. If it is now proposed, for the purpose of taking advantage of the depreciation of silver in the payment of debts, to coin and make a legal tender a silver dollar of less commercial value than any other dollar, whether of gold or paper, which is no lawful money of this country, such measure, it will hardly be questioned, will, in the judgment of mankind, be an act of bad faith. As to all debts heretofore contracted, the silver dollar should be made a legal tender only at its market value. The standard of value should not be changed without the consent of both parties to the contract. National promises should be kept with unflinching fidelity. There is no power to compel a nation to pay its just debts. Its credit depends on its honor. The nation owes what it has led or allowed its creditors to expect. I cannot approve a bill which in my judgment authorizes the violation of sacred obligation. The obligation of the public faith transcends all questions of profit or public advantage. Its unquestionable maintenance is the dictate as well of the highest expediency as of the most necessary duty, and should ever be carefully guarded by the Executive, by Congress, and by the people.

It is my firm conviction that if the country is to be benefited by a silver coinage it can be done only by the issue of silver dollars of full value, which will defraud no man. A currency worth less than it purports to be worth will in the end defraud not only creditors, but all who are engaged in legitimate business, and none more surely than those who are dependent on their daily labor for their daily bread.

R. B. HAYES."

United States, to be prepared by the Secretary of the Treasury, in such form and of such denominations, not less than one dollar nor more than one thousand dollars, as he may prescribe, and a sum sufficient to carry into effect the provisions of this act is hereby appropriated out of any money in the Treasury not otherwise appropriated."

Sec. 2. "That the Treasury notes issued in accordance with the provisions of this act shall be redeemable on demand, in coin, at the Treasury of the United States, or at the office of any Assistant Treasurer of the United States, and when so redeemed may be reissued; but no greater or less amount of such notes shall be outstanding at any time than the cost of the silver bullion and the standard silver dollars coined therefrom, then held in the Treasury purchased by such notes; and such Treasury notes shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues, and when so received may be reissued; and such notes, when held by any national banking association, may be counted as part of its lawful reserve. That upon demand of the holder of any of the Treasury notes herein provided for, the Secretary of the Treasury shall, under such regulations as he may prescribe, redeem such notes in gold or silver coin, at his discretion, it being the established policy of the United States to maintain the two metals on a parity with each other upon the present legal ratio, or such ratio as may be provided by law."

Sec. 3. "That the Secretary of the Treasury shall each month coin two million ounces of the silver bullion purchased under the provisions of this act into standard silver dollars, until the first day of July, eighteen hundred

and ninety-one, and after that time he shall coin of the silver bullion purchased under the provisions of this act as much as may be necessary to provide for the redemption of the Treasury notes herein provided for, and any gain or seigniorage arising from such coinage shall be accounted for and paid into the Treasury."

Sec. 5. "That so much of the act of February twenty-eighth, eighteen hundred and seventy-eight, entitled 'An Act to authorize the coinage of the standard silver dollar and to restore its legal-tender character,' as requires the monthly purchase and coinage of the same into silver dollars of not less than two million dollars, nor more than four million dollars' worth of silver bullion, is hereby repealed."

APPROVED SEPTEMBER 26, 1890.
(26 U. S. Stat., 485.)

Sec. 1. "That from and after the passage of this act the coinage of the three-dollar gold piece, and the three-cent nickel piece be and the same is hereby prohibited, and the pieces named shall not be struck or issued by the Mint of the United States."

Sec. 2. "That as fast as the said coins shall be paid into the Treasury of the United States they shall be withdrawn from circulation and be recoined into other denominations of coin."

APPROVED MARCH 3, 1891.
(26 U. S. Stat., 966.)

"That the Secretary of the Treasury shall, as soon as practicable, coin into standard silver dollars the trade dollar bullion and trade dollars now in the Treasury, the expense thereof to be charged to the silver profit fund."

APPROVED NOVEMBER 1, 1893.
(28 U. S. Stat., 4.)

"That so much of the act approved July fourteenth, eighteen hundred and ninety, entitled 'An Act directing the purchase of silver bullion and issue of Treasury notes thereon, and for other purposes,' as directs the Secretary of the Treasury to purchase from time to time silver bullion to the aggregate amount of four million five hundred thousand ounces, or so much thereof as may be offered in each month at the market price thereof, not exceeding one dollar for three hundred and seventy-one and twenty-five one-hundredths grains of pure silver, and to issue in payment for such purchases Treasury notes of the United States, be, and the same is hereby, repealed. And it is expressly declared to be the policy of the United States to continue the use of both gold and silver as standard money, and to coin both gold and silver as standard money of equal intrinsic and exchangeable value, such equality to be secured through international agreement, or by such safeguards of legislation as will insure the maintenance of parity in value of the coins of the two metals, and the equal power of every dollar at all times in the markets and in the payment of debts. And it is hereby further declared that the efforts of the Government should be steadily directed to the establishment of such a safe system of bimetallism as will maintain at all times the equal power of every dollar coined or issued by the United States, in the markets and in the payment of debts."

SILVER PURCHASED BY SECRETARY OF TREASURY.

Fine Ounces.	Coinage Value.	Actual Cost.	Profit or Seigniorage.
	UNDER ACT FEBRUARY 28, 1878.		
291,272,018	$376,575,492	$308,279,260	$68,296,232
	UNDER ACT JULY 14, 1890.		
168,674,682	$218,079,496	$155,931,002	$62,148,474
		Total profit or seigniorage.....	$130,444,726

(Record, p. 9.)

Highest, lowest, and average value of a United States silver dollar, measured by the market price of silver, at the average London price of silver, each year since 1873.

Calendar year.	Bullion value of a silver dollar. Highest.	Lowest.	Average.
1873	$1.016	$0.981	$1.004
1874	1.008	.970	.988
1875	.977	.941	.964
1876	.991	.792	.894
1877	.987	.902	.929
1878	.936	.839	.891
1879	.911	.828	.868
1880	.896	.875	.886
1881	.896	.862	.881
1882	.887	.847	.878
1883	.868	.847	.858
1884	.871	.839	.861
1885	.847	.794	.823
1886	.797	.712	.769
1887	.799	.733	.758

1888	.755	.706	.727
1889	.752	.746	.724
1890	.926	.740	.810
1891	.827	.738	.764
1892	.742	.642	.674
1893	.655	.513	.604
1894	.538	.457	.491
1895	.532	.461	.505
1896 (six months)	.539	.517	.528

*371.25 grains of pure silver are contained in a silver dollar.

SILVER DOLLAR COINAGE.

Under act of April 2, 1792	8,031,238
Under act of Feb. 28, 1878	378,166,793
Under act of July 14, 1890†	70,968,527
Under act of March 3, 1891‡	5,078,472

†To Nov. 30, 1897. The uncoined bullion purchased under that act remaining in the Treasury at that date, cost $102,667,153 (Record, p. 10.)

‡Recoinage of trade dollars.

THE QUESTION IN THIS CASE.

The only question raised on this record is whether the provision of the act of Congress approved Feb. 28, 1878, known as the Bland-Allison Act, making the silver dollar of 371.25 grains of pure silver and 41.25 grains of alloy, or 412½ grains of standard silver, a full legal tender for all debts and dues, public and private, is constitutional and valid.

The exact language of the provision is as follows:

"Which coins, together with all silver dollars heretofore coined by the United States of like weight and fineness, shall be a legal tender at their nominal value, for all debts and dues, public and private, except where otherwise expressly stipulated in the contract."

THE FACTS ON WHICH THE QUESTION ARISES.

On the 13th day of December, 1897, the complainant, Stephen Baldwin, tendered to the defendant, Fred A. Baker, 364 U. S. silver dollars, coined since 1878, in payment of a mortgage debt for that amount contracted Jan. 12, 1894. The bullion value of the coins so tendered was $163.80. (Record, p. 11-12.)

The tender was refused on the ground that the legal tender provision of the Bland-Allison act is unconstitutional. (Record, p. 3.)

The complainant then filed a bill in the Oakland Circuit to obtain a discharge of the mortgage under Sec. 5704, 2 Howell's Stat. of Mich., p. 1482. (Record, p. 1.)

The defendant answered the bill, admitting the tender,

but insisting on its legal insufficiency on the ground stated. (Record, p. 5.)

To avoid any question about the power of the court to take judicial notice of the history of the coinage of the silver dollar by the mints of the United States, the essential facts were set up in the answer and proved on the hearing. (Record, pp. 9-10, 18-19.)

DECREE.

The Oakland Circuit, before Hon. Geo. W. Smith, Circuit Judge, granted a decree in favor of the complainant. (Record, p. 16.)

APPEAL.

The defendant settled a case under the statute and took and perfected an appeal to the Supreme Court of Michigan. (Record, pp. 18-20.)

OUTLINE OF ARGUMENT.

1. *In what sense is the word "value" used in the Constitution of the United States?*

The value of a coin depends upon the quantity of pure gold or pure silver contained in it. This fundamental truth or fact had been demonstrated by centuries of experience prior to the adoption of the constitution, and the framers of that instrument used the word "value" in the light of that experience and in recognition of the fact established by it.

Therefore, the power of Congress "to coin money and regulate the value thereof," is nothing more, nor less, than the power to cause the precious metals to be struck into the form of coin, and to determine the amount of pure gold or pure silver, and the alloy, to be contained in each piece.

The power of Congress "to regulate the value" "of foreign coin," is nothing more, nor less, than the power to ascertain the weight of the pure gold or pure silver contained in each coin, and to declare and express its value, as so ascertained, in the coinage of the United States.

2. *Is it within the power of Congress to provide for the coinage of a debased coin and to declare it equal in value to those of the same metal of full weight and fineness?*

No government can do an impossible thing, such as making one equal to two, or any unequal things equal.

Therefore, Congress has no power to declare a lesser number of grains of one of the two precious metals equal to a greater number of grains of the same metal.

Congress can provide for the coinage of subsidiary or collateral coins that are below standard in weight or fine-

ness, but it cannot make such debased coins a legal tender for any sum whatever, except when provision is made for their redemption in coins of standard weight and fineness, that is, of full value.

3. *Under what conditions and to what extent is it competent for Congress to provide for the coinage of coins containing a given number of grains of pure gold, and also of coins containing a given number of grains of pure silver, and to make them of equal value regardless of their relative intrinsic or bullion value in the markets of the world?*

The law of money known as Gresham's law, that a cheaper currency will drive out and destroy a dearer one, is inexorable, and confronts all governments.

Therefore, Congress must either adopt a bimetallic system to operate under and be subject to that law; or, if for convenience, or any other reason, it desires to make use of both gold and silver in the coinage and the circulation, it must limit the amount of the cheaper money and treat it as a debased, subsidiary or minor coinage, and provide for its redemption in the dearer coin of the same or the other metal.

Congress can adopt the alternating or double standard, or a settled single standard, and either one of these can be coupled with a subsidiary or minor coinage redeemable in coins of full value.

All the nations in the world have been compelled to conform in one way or another with one of the foregoing alternatives, and the United States cannot escape therefrom.

If the act of Feb. 28, 1878, had provided for the unlimited coinage of silver dollars on private account, on an equality with gold, the single gold standard established by the act of Feb. 12, 1873, would have been rendered inoperative, and the United States would have become an

alternating or double standard country with silver as the first actual standard; and except as applied to pre-existing contracts the act of Feb. 28, 1878, would have been valid.

Congress limited the coinage of silver dollars, but the act of Feb. 28, 1878, does not provide, nor does any other act provide, for the redemption in gold of silver dollars. They are therefore nothing more than debased coins, without any provision whatever for their redemption.

CONCLUSION.

The provision of the act of Feb. 28, 1878, making silver dollars a legal tender for all debts and dues, public and private, is valid so far as it makes them a legal tender in payments to the government itself. So far as it makes them a legal tender in payments by the government, or in the payment of private debts, it is unconstitutional and void.

CLEARING THE DECKS.

Before proceeding to extend and elaborate the argument we desire to submit in this case, it is proper to state, that the question whether Congress has power to make United States Treasury notes a legal tender in the payment of debts, is not presented by this record, and it will not be referred to except to show the very marked distinction between that question, which concerns the power of Congress "to borrow money," and the question in the present case, which calls for an interpretation and construction of the power of Congress "to coin money."

It is also proper to say that while in the foregoing outline we have submitted three separate propositions, the second and third are simply applications of the first. That is to say, if the first proposition is correct, that the word "value," as used in the coinage clause of the Constitution, has the meaning we have attributed to it, the second and third propositions follow as a matter of course.

The great question to be considered, therefore, is this:

"What did the men who framed the Constitution of the United States, and the people who adopted it, mean when they conferred on Congress the power to 'regulate the value' of our own, and 'of foreign coin?'"

I.

There is not a single fact or circumstance in all the cotemporaneous and prior history of the Anglo-Saxon race indicating that when the Constitution of the United States was framed and adopted it was intended and understood that Congress would have power to put into circulation or to maintain therein, a debased coin. On the contrary, the evidence is overwhelming and absolutely conclusive that it was not intended to vest in Congress any power to coin money below the established standard in weight or fineness.

In ancient and mediaeval England the coinage of money was a royal prerogative. While the princes of the subkingdoms, known as counties palatine, and some of the spiritual princes like the Archbishops of Canterbury and of York, exercised the power, they did so by virtue of royal grants, or by prescription. As a prescription is based on the presumption of a grant, the crown was the recognized source of the power, wherever or by whomsoever enjoyed.

In the struggles of the English people for constitutional liberty the seat of power was first transferred from the King to the Barons, and then to the House of Commons. As might be expected, there was the same interference with the royal power to coin money, as took place with reference to the other prerogatives of the crown.

From the Norman conquest to the 30th year of Edward III. (1357), a pound sterling was actually a pound troy weight of standard silver, divided into twenty shillings of twelve pennies each, that is, into two hundred and forty pennies, making the ancient silver penny of the weight of a troy pennyweight.

That the silver penny and the pennyweight were of the same weight is shown by an English statute of uncertain date, but prior to the reign of Edward III., which commenced in 1327:

"AN ORDINANCE FOR MEASURES.

"By consent of the whole realm of England the Measure of our Sovereign Lord the King was made so that an English penny, called a sterling, round and without any clipping, shall weigh 22 wheat corns in the midst of the ear, and 20 pence shall make an ounce, and 12 ounces 1 lb., and 8 lbs. shall make a gallon of wine, and 8 gallons of wine shall make 1 bushel London, which is the 8th part of a quarter."

(1 Eng. Stat., 406.)*

In *1 Ashley's English Economic History, pp. 171, 179*, this statute reads: "32 wheat corns" (instead of "22"), but this is stated to have been the equivalent of 22½ troy grains. The Tower pound was used in England until the 18th Henry VIII. (1527), when troy weight was adopted. The Tower pound was three-quarters of an ounce troy, or 360 grains troy, less than the pound troy, that is, the Tower pennyweight was 22½ grains troy, and the Troy pennyweight was 24 grains troy. The Tower pound contained 5,400 grains troy, and the Troy pound contained 5,760 grains troy.

17 EDWARD III., (1343).

"Item, it is accorded to make money of good sterling in England of the weight and alloy of the ancient sterling, which shall be current in England between the

*This, and the subsequent citations herein of the early English Statutes are to Pickering's Cambridge Edition of the English Statutes at Large.

great men and the commons of the land; and which shall not be carried out of the realm of England in any manner, nor for any cause whatsoever. And in case that the Flemmings will make good money of silver, gross or other, according in alloy of good sterling, that such money shall be current in England between merchant and merchant, and others, who of their own accord will receive the same; so that no silver be carried out of the realm."

(2 Eng. Stat., 8.)

About the year 1347 Edward III. coined twenty-two shillings, and afterwards twenty-five shillings, out of the pound, of sterling silver.

It was undoubtedly this abuse of his prerogative that led to the following statute:

25 EDWARD III., c. 13, (1350).

"Item, it is accorded, that the money of gold and silver which now runneth shall not be impaired in weight nor in alloy; but as soon as a good way may be found the same shall be put in the ancient state as in the sterling."

(2 Eng. Stat., 57.)

This statute was a limitation on the power of the crown, as it could not apply to any one except the king and his grantees. There can be no doubt but that it belongs to that class of great statutes which mark epochs in the history of England, and constitute the constitution of that government.

Chapter 20 of the same statute reads:

"Item, it is accorded and assented that the moneyers and other wardens and ministers of the money shall receive plate of gold and silver by the weight; and in the same manner shall deliver the money when it shall be

made, by weight, and not by number, without any tarrying."

(2 Eng. Stat., 60.)

2 HENRY IV., c. 6, (1400).

"Item for the great deceit that is in the money of gold and silver of Flanders and Scotland, that doth commonly run in payments made in divers parts of the realm, to the great damage of the King and of his people: it is ordained and established, That all the money of gold and silver of the coin of Flanders and of all other lands and countries beyond the sea, and also of the land of Scotland, shall be voided out of the realm of England, or put to coin to the bullion within the same realm, betwixt this and the feast of Christmas next ensuing upon pain of forfeiture of the same."

(2 Eng. Stat., 409.)

"Gally halfpence and the money called Suskin and Dotkin and all manner of Scottish money of silver" were required to be brought to the king's exchanges to be broken and stricken and coined into English halfpence by *3 Hen. V., c. 1 (1415).*

(3 Eng. Stat., 38.)

9 Hen. V. STAT., 1 c. 11, (1421).

"Item, to avoid the deceits and perils which long have continued within the realm by washers, clippers, and counterfeiters of the money of the realm of England, to the great loss and damage of all the people of the same realm; (2) the King, by the advice and assent of all the lords and commons assembled in this parliament, hath ordained and established, That from Christmas even next coming, none of the King's liege people shall receive any money of English gold in payment but by the King's

weight thereupon ordained. (3) And because a great part of the gold now current in payment is not of rightful weight nor of good alloy; the same shall be sent to the coin, to the intent that it shall be newly coined of just weight and of good alloy; and because that shall be to the great loss and costs of the King's subjects, unless it please him to relieve them in this case; (4) our sovereign lord the King, of his special grace, hath remised and pardoned to all his liege people, which betwixt this and the said feast of Christmas shall be caused to be coined of new at the King's coinage within the Tower of London, their money of gold that is not of just weight nor of good alloy, that is to say, all that to him pertaineth for this new coinage of such gold as afore; (5) saving always to the master of the mint, and to other officers of the same, that which to them reasonably pertaineth."

(3 Eng. Stat., 67.)

9 HEN. V. STAT., 2, (1421).

"At the parliament holden at Westminster the first day of December, in the ninth year of the reign of King Henry the Fifth, it is ordained by the assent of the lords spiritual and temporal, and at the request of the commons there assembled," etc.

Chap. I.

A confirmation of all statutes made touching money.

First, That all the statutes and ordinances, which have been made in the time of the King's noble progenitors, touching the good and lawful governance of his money of gold and silver, not repealed, be well and firmly kept and holden in all points.

Chap. II.

All men may resort to the King's exchanges, or to the Tower, to have money new coined.

Item, the King, inasmuch as he conveniently may, shall do to be ordained his exchanges of the money of gold and silver in the City of London, and elsewhere in the realm, for the ease of his people, which shall be holden in open places in high streets. And that all they that will come to the Tower of London, there to have money of new coined, they shall have money coined, and thereof shall be delivered within eight days, according to the very value of that that they shall bring thither, paying the seigniorage and coinage of gold, after the rate of five shillings for the pound of the Tower, and for the seigniorage and coinage of silver fifteen pence for the pound, and no more. And that they that will not approach the Tower to do the same, but will be thereof delivered at the exchanges, shall pay for the exchange after the rate of a penny for the noble, and for the half noble a half penny, and for the fourth part of the noble a farthing, with the seigniorage and coinage, as afore is said.

Chap. III.

At the King's exchanges good money shall be delivered to the parties, or else he that doth receive it may refuse it.

Item, That the masters and workers of the money, and also the strangers in all places where money shall be coined, made, or changed, shall be holden to deliver and pay all that that ought to pertain to them for such exchange of good and lawful money of England, by and of just weight, or by the number, of the election of him which shall receive the same without any delay or difficulty. And if percase it happen that any notable default

in the weight of the money, or in the alloy be found (which God defend) upon the delivery or payment to be made at the said Tower, or at the exchanges aforesaid, that then it shall be well lawful to every person that shall find such default, to refuse that that is defective before that he depart the place where he the same shall receive. And that the master, or the changers be holden to deliver to him sufficient money for the same, without delay, and to melt that that shall so be found defective.

Chap. IV.

The officers of the exchanges shall bring to the Tower all the gold or silver which they buy or exchange.

Item, That they which shall be wardens and surveyors and ministers of the exchanges out of the Tower, shall be holden and bounden to bring all the gold and silver that they shall receive by way of exchange, or shall buy by color of their office, to the Tower of London, there to be molten and made in money, in augmentation and increase of the money for the profit of the realm and ease of the people, without being sold, aliened, or put to any other use.

Chap. V.

The mint shall be at Calais.

Item, That the King's Mint be coined and made at Calais, in the manner as it hath been made and governed at the Tower of London.

Chap. VI.

The alloy and weight of money.

Item, That all the money of gold and silver that shall be made at the Tower of London and at Calais, or else-

where within the realm of England, by authority royal, shall be made of as good alloy, and good weight, as it is now made at the Tower.

Chap. VII.

The weight of gold shall be sent to every city.

Item, That the King do to be ordained good and just weight of the noble, half noble, and farthing of gold, with the rates necessary to the same for every city, borough, and market town of the realm, to be delivered by the chancellor of England to them that will have them, to the intent that they be not deceived by false counterfeiters, and them that use false weight in deceit of the people.

(3 Eng. Stat., 68.)

2 HEN. VI., c. 12, (1423).

The office and duty of the King's assayer, controllour, and master of the mint.

"Item, To the intent that the more bullion may be brought to the mint, and the greater plenty of white money be made and current within the realm, for the ease and profit of the commonalty of the same, it is ordained and established, That the master of the mint shall keep his alloy in the making of white money according to the form of his indenture; (2) and that the same master receive of every person, that shall bring any silver to the mint, the same money at the true value as it is worth according to the same alloy, upon pain to pay to the party his double damages. (3) And also to the intent that this ordinance may the better and more justly be observed, it is ordained, That the King's assayer, which is a person indifferent betwixt the master of the mint and the merchant, and also the controller of the mint, shall be pres-

ent when any such bullion of silver is brought to the mint, to the intent that the said assayer may rightfully set the value of the same according to the law, in case of variance betwixt the master and the merchant; and the controller to controul as well silver that is brought to the said mint, as carried out of the same, every two days faithfully and indifferently to do their duty, without taking any reward other than the fee which they shall take of the King, upon pain to yield double damages, as afore is said; (4) and that the assayer and controller be credible, substantial, and expert men, having perfect knowledge in the mystery of goldsmiths, and of the mint. (5) And also that neither the master of the mint, nor the exchanger for the time being, sell, nor cause to be sold, nor aliene to any other use but to the coin, no manner of gold nor of silver wrought or unwrought, coined or not coined, or bullion which is brought to the mint, or to the exchange, but apply the same only to the money, according to the form of the said indenture, upon the pain contained in the same indenture. (6) And that the same master of the mint cause to be stricken, from time to time, half nobles, farthings of gold, groats, half groats, pence, half pence, and farthings, for the ease of the people, according to the tenor of the indenture made betwixt the King and him, upon the pain contained in the same, so that the common people may have recourse to the exchange for small gold and white money, as they reasonably shall need."

(3 Eng Stat., 88.)

2 HEN. VI., c. 13, (1423).

The price of a pound of silver in plate, piece, or mass.

"Item, for as much as great scarcity of white money is within the realm, because that silver is bought and sold not coined, at the price of xxxij.s. the pound of Troy,

whereas the same pound is no more of value at the coin than xxxij.s. (abated for the coinage twelve pence) it is ordained and established, for the increase of white money, That no man, of what estate or condition that he be within the realm, shall buy or sell no silver in plate, piece, nor in masse being as good of alloy as the sterling, above thirty shillings the pound of Troy, over the fashion, upon the pain of forfeiture of the double value as of much as he buyeth or selleth contrary to this ordinance. And that the one-half be forfeited to the King's use, and the other half to the use of him that will sue and prove the same forfeiture. Provided always, That they which go to the coin, may have and take of the master of the same coin, according as is lawfully contained in the indentures thereof made betwixt the King and him. And also the master of the said mint, for the time being, may take and deliver as is contained in the said indentures without taking more for the ease and profit of the common people.

(3 Eng. Stat., 89.)

19 HEN. VII., c. 5, (1503).

COIN.

"The King our sovereign lord, seeing evidently that his coin, and especially of silver, is sore impaired, as well by clipping thereof, as counterfeiting of the same, and by bringing into his realm of the coin of Ireland, by occasion thereof great rumor and variance daily increaseth among his subjects for taking and refusing the same; (2) for ceasing and pacifying whereof, and for the universal weal of this his realm, by the advice and assent of his lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, hath ordained, established and enacted, That all manner of gold of the coins of a sovereign, half sovereign,

ryal, half ryal, and the fourth part of a ryal, the angel, and the half angel, and every one of them, being gold, *whole and weight*, shall go and be current in payment through all this his realm for the sum that they were coined for. (3) And also that as well all manner groats of English coin, and of the coin of other lands now current in this realm for groats, or for iv. d. being silver, *and not clipped, minished, or otherwise impaired*, except reasonable wearing (albeit they be cracked) as all manner of half groats, or pence of ij. d. of English coin, or of the coin of other lands, now current in this realm for half groats, or for ij. d. *not clipped, minished, or otherwise impaired*, being silver (howbeit they be cracked), shall in likewise go and be current through all the same realm for the sum as they were coined for. (4) And over that, That all manner of pence being silver, and having the print of the King's coin, shall have course, and be current for payment, as well to him in all his receipts, as to all his receivers, and to all other lords spiritual and temporal, and their receivers, and to all other within this realm, without any manner refusal or contradiction; except only pence bearing spurs, or the mullet, betwixt the bars of the cross; and those pence so bearing the print of the spur or the mullet, *to have course for half d. and not above.* (5) And if any person hereafter refuse any coin afore rehearsed, to take it in payment after the effect and tenor of this act, that then he that so refuseth it shall be compelled by the mayor, sheriff, bailiff, constable, or other chief officer or governor of the town or place where any such payment shall be refused, to accept and take the same payment, (6) and furthermore to be imprisoned, or otherwise punished by the discretion of the said mayor, sheriff, bailiff, constable, or other chief officer or governor afore rehearsed. (7) And if the said mayor, sheriff, bailiff, constable, or other chief officer or governor refuse to take any

such coin in payment, as it is above rehearsed, that then he so refusing the said payment, to be compelled by the justices of the peace of the same county where such payment shall be so refused, to accept and take the same payment, and he so refusing the same, to be further punished for the said refusing by the discretion of the same justice. (8) And also it is ordained by the said authority, That all manner of groats and half groats, or pence of ij. d. as well English coin, as coin of other lands, *clipped, minished, or otherwise impaired,* except reasonable wearing, *shall not go nor be in any wise current for payment within this realm, but utterly to be refused and forsaken in payment from henceforth:* (9) And that notwithstanding it shall be lawful to any person having any such groats or pence of ij. d. clipped or minished, to bring the same to the King's mint, there to be changed after the custom of the same mint, or convert the same into plate, bullion, or otherwise sell or employ it to his most profit and advantage within this realm, any other act or acts contrary in any wise notwithstanding. (10) And in eschewing and avoiding of such clipping in time to come, the King our sovereign lord, by the advice of his council, hath caused to be made new coins of groats, and pence of ij. d. and that every piece of the same coins shall have a circle about the utter part thereof; (11) and also that all manner of gold hereafter to be coined within this his realm shall have the whole scripture about every piece of the same gold, without lacking of any part thereof, *to the intent that his subjects hereafter may have perfect knowledge by that circle or scripture when the same coins be clipped or impaired.* (12) And also it is enacted by the said authority, That if the warden or controller of the King's mints hereafter duly execute not their offices in searching the same coins and see that it be made perfect in form aforesaid, before that it pass from the said mint, and then the same warden and controller shall forfeit

their said office, and make fine for the same at the King's pleasure."

(4 Eng. Stat., 84.)

THE TUDOR DEBASEMENT.

From a very early period a pound of sterling silver contained 11 oz. 2 dwts. of pure silver and 18 dwts. of alloy. It is highly creditable to the kings, parliaments and people of England that a deliberate debasement of the coin, for the profit of the crown, was never actually carried into execution except for one short period of seventeen years.

In 1543 Henry VIII. reduced the amount of pure metal in a pound of silver to 10 oz.; then to 6 oz.; then to 4 oz.; and finally to 3 oz. An effort to reform the coinage began under Edward VI., but it failed, and Mary fell back to 3 oz.

Elizabeth had the honor very early in her reign to restore the coinage to its ancient purity. Froude in his History of England, vol. 7, chap. 6, has given a short yet complete account of this Elizabethan reform, and we cannot do better than insert it here.

FROUDE'S HISTORY OF THE RECOINAGE OF 1560.

"No measure in Elizabeth's reign has received more deserved praise than the reformation of the coinage. The applause indeed has at times overpassed her merit; for some historians have represented it as accomplished at the cost of the crown; wheras the expense, even to the calling in and recoining the base money, was borne to the last penny by the country. Elizabeth and her advisers deserve the credit only of having looked in the face, and of having found the means of dealing with a complicated and most difficult problem.

"When the ministers of Edward the Sixth arrived at last at the conviction that the value of a shilling depended on the amount of pure silver contained in it, and that the base money therefore with which the country had been flooded must be called down to its natural level, the people, it was roughly calculated, had lost something over a million pounds. An accurate computation, however, was impossible, for the issues of the government, large as they were, had been exceeded by those of private coining establishments in England and abroad, where the pure coin left in circulation was melted down and debased.

"The evil had been rather increased than diminished by the first efforts at reformation. The current money was called down to an approach to its value in bullion, and it was left in circulation under the impression that it would no longer be pernicious; but the pure shillings of Edward's last years could not live beside the bad, and still continued, either to leave the country or to be made away with by coiners. The good resolutions of further reform with which Mary commenced her reign disappeared as she became straitened for money; the doctrinal virtues superseded the moral, and relapsing upon her father's and her brother's evil precedents, she poured out a fresh shower of money containing but three ounces of silver with nine of alloy, and attempted to force it once more on the people at its nominal value.

"The coining system acquired at once fresh impetus; and Elizabeth on coming to the throne, found prices everywhere in confusion. Amidst the variety of standards and the multitude of coins recognized by the law, the common business of life was almost at a standstill. Of current silver there was such as remained of Edward's pure shillings, containing eleven ounces and two pennyweights of silver in the pound; the shillings of the first year of

Mary, containing ten ounces; and the old shillings of Henry the Eighth, containing eleven ounces.

"Of testers or sixpences, the coin in common use, there were four sorts; the tester of eight ounces of silver in the pound, the tester of six, the tester of four, and the tester of three; with groats, rose pence, and other small coins, of which the purity varied in the same proportion. The testers of eight, six and four ounces had been issued originally as shillings, and had been called down to six pences. These three kinds were all of equal value, 'for that which lacked in fineness exceeded in weight,' and they were really worth four pence halfpenny. The fourth kind, the tester of three ounces, was worth only two pence halfpenny; but 'the worst passed current with the best' in the payment of the statute wages of the artisan or laborer. The working man was robbed without knowing how or why, while the tradesmen and farmers, aware that a sixpence was not a sixpence, defied the feeble laws which attempted to regulate the prices of produce, charged for their goods on a random scale, and secured themselves against loss by the breadth of margin which they claimed against the consumer.

"The earliest extant paper on the subject in the reign of Elizabeth is the composition of the Queen herself. With the rise in prices the landowners generally had doubled their rents, while the rents of the Crown lands had remained unchanged. The ounce of silver in the currency of the Plantagenets, instead of being coined into the five shillings of later usage, had been divided only into a quarter of a mark, or three shillings and four pence. Elizabeth proposed to return to the earlier scale, and retaining the same nominal rent of which she found herself in receipt, to allow 'the tenants of improved rents to answer their lords after the rate of the abatement of value for

every pound a mark;' while all outstanding debts or contracts might be graduated in the same proportion.

"The objections to this project, it is easy to see, would have been infinite. It fell through—was heard of no more. But in their first moments of serious leisure, immediately after the Scotch war, in September, 1560, the Council determined at all hazards to call in the entire currency, and supply its place with new coin of a pure and uniform standard. Prices of all kinds could then adjust themselves without further confusion.

"The first necessity was to ascertain the proportions of good and bad money which was in circulation. A public inquiry could not be ventured for fear of creating a panic, and the following rudely ingenious method was suggested as likely to give an approximation to the truth. 'Some witty person was to go among the butchers of London, and to them rather than to any other, because they retailed of their flesh to all manner of persons in effect so that thereby of great likelihood came to their hands of all sorts of money of base coin; and to go to a good many of them—thirty-six at least—and after this manner, because they should not understand the meaning thereof, nor have no suspicion on that behalf—requiring all of them to put all the money that they should receive the next forenoon by itself, and likewise that in the afternoon by itself, and they should have other money for the same; promising every one of them a quart of wine for their labours, because that there was a good wager laid whether they received more money in the afternoon—whereof nine score pounds being received of the butchers, after the manner aforesaid, being all put together, then all of the shillings of three ounces fine and under, but not above, should be tried and called out—as well counterfeits after the same stamp and standard as oth-

ers; and after the rest of the money might be perused and compared one with another."

"Either by this or some other plan, the worst coin in circulation was found to be about a fourth of the whole, while the entire mass of base money of all standards was guessed roughly at 1,200,000 *l.* How to deal with it was the next question. Sir Thomas Stanley offered several schemes to the choice of the Government.

"1. The testers, worse and better together, might be called down from six pence to four pence; a period might be fixed within which they must be brought to the mint, and paid for at that price. The 1,200,000 *l.* would be bought in for 800,000 *l.*; the bullion which it contained, being recoined and reissued at eleven ounces fine, would be worth 837,500 *l.*; and the balance of 37,500 *l.* in favor of the Government, together with the value of the alloy, would more than cover the expense of the process. If the Queen wished to make a better thing of it, the worst money might be sent to Ireland, as the dirt heap for the outcasting of England's vileness.

"2. The bad coin might be called in simply and paid for at the mint according to its bullion value, a percentage being allowed for the refining.

"3. If the Queen would run the risk she might relieve her subjects more completely by giving the full value of four pence halfpenny for the six pence, three half pence for the half groat, and so on through the whole coinage, allowing three-quarters of the nominal value, and taking her chance—still with the help of Ireland—of escaping unharmed.

"Swiftness of action, resolution, and a sufficient number of men of probity to receive and pay for the moneys all over the country were the great requisites. The people were expected to submit to the further loss without complaint if they could purchase with it a certain return

to security and order. Neither of Stanley's alternatives were accepted literally. The standard for Ireland had always been something under that of England. But the Queen would not consent to inflict more suffering on that country than she could conveniently help. The Irish coin should share in the common restoration, and be brought back to its normal proportions.

"On the 27th of September the evils of an uneven and vitiated currency were explained by proclamation. The people were told that the Queen would bear the cost of refining and recoining the public moneys if they on their side would bear cheerfully their share of the loss; and they were invited to bring in and pay over to persons appointed to receive it in every market town the impure silver in their hands. For the three better sorts of tester the Crown would pay the full value of four pence half-penny, and for the half groats and pence in proportion. For the fourth and most debased kind, which was easily distinguishable, it would pay two pence farthing.

"To stimulate the collection a bounty of three pence was promised on every pound's worth of silver brought in. Refiners were sent for from Germany; the mint at the Tower was set to work under Stanley and Sir Thomas Fleetwood; and in nine months the impure stream was washed clean, and a silver coinage of the present standard was circulating once more throughout the realm.

"Either a large fraction of the base money was not brought in, or the estimate of the quantity in circulation had been exaggerated. The entire weight collected was 631,950 pounls; 638,000 *l.* (in money) was paid for it by the receivers of the mint, and it yielded when melted down 244,416 pounds of silver, worth in the new coinage of eleven ounces fine 733,248 *l.* So far, therefore, there was a balance in favor of the Crown of 95,135 *l.*; but the cost of collection, the premiums, and other collateral

losses reduced the margin to 49,776 *l.* 9s. 3d. Thirty-five thousand six hundred and eighty-six pounds, fifteen shillings, and six pence (35,686 *l.* 15s. 6d.) was paid for the refining and reminting; and when the whole transaction was completed Elizabeth was left with a balance in her favour of fourteen thousand and seventy-nine pounds, thirteen shillings and nine pence (14,079 *l.* 13s. 9d.)."

THE STUART DEBASEMENT.

Charles I. became King of England in 1625. The mint indenture then in force was that of July, 1619. Under it the pound of crown gold was coined into £41 by tale. Out of this a small seigniorage of 15s. was reserved, 7s. of which went to the masters and workers of the mint. The pound of sterling silver costing at the mint £3 was coined into £3, 2s. The seigniorage of 2s. was so small that very little, if anything, was left for the King.

John Gilbert had been a warden of the mint in Scotland and chief engraver to the mint in England. Soon after Charles I. ascended the throne Gilbert submitted a paper to the Lord High Treasurer in which he advised the taking of an additional seigniorage of 6d. from every ounce of silver, and 7s. from every ounce of gold. Gilbert estimated that this would produce not less than £100,000 yearly for the king. An alloy was to take the place of the pure metal taken from the coin, and the utmost secrecy was to be observed. This proposition was debated in the Privy Council, and in April, 1626, a warrant was issued directing the Attorney-General to prepare a mint indenture to carry it into effect. August 14, 1626, a commission intended to take the place of an indenture was issued. The pound of silver was to be coined into £3 10s 6d, and the pound of gold into £44. The tale of silver was

increased from 62s to 70s 6d, a matter of 8s 6d. Of this 3s went to the masters and workers of the mint as a bribe, leaving a net gain for the king of 5s 6d. Of the £3 increase in the tale of gold 8s went to the moneyers of the mint, and £2 12s to the king.

As soon as the new coin was issued the debasement was discovered by the public, and great dissatisfaction resulted. Charles became alarmed and the matter was debated before him on August 28, and again on Sunday, September 3, and Monday, September 4, when the king, in spite of the opposition of Buckingham, decided to abandon the scheme to enrich himself by debasing the coin. The following proclamation was issued:

"PROCLAMATION BY THE KING. (Sept. 4, 1626)."

"The king's most excellent majesty, by the advice of the privy council, for divers important considerations, doeth publish and declare to all his loving subjects that all coynes of gold and silver within the realm of England shall bee and shall bee taken and received to be current in all receipts and payments in such species and at such weight, finenesse and value as the same were current the first day of August last passed and not otherwise; and that all moneys of gold and silver coyned sithence the said first day of August in any other manner than according to the proclamation in force the said first day of August shall be esteemed but as bullion and not bee currant.

"Given at our Palace of Westminster, the fourth day of September, in the second yeere of our reigne of England, Scotland, France and Ireland.

"God save the king."

SIR ROBERT COTTON.

The part taken by Sir Robert Cotton in the deliberations before the king in council is shown by the following letter written in London, September 8, 1626, by Mr. Pory to Rev. Joseph Mead.

"The proclamation against the new coin having been printed now the 4th day, through the iniquity of the time or the man is not yet proclaimed. Howbeit having passed through the great seal it stands in force and the truth is, he (Buckingham) is ashamed of the great repulse he had on Sunday by a man of no greater outside then Sir Robert Cotton, and on Monday by his majesty and the whole council table. For on Sunday in the afternoon all disputants on both sides being warned to come before the Lords, his majesty being then present and president, Sir Robert Cotton then drew out a paper by his majesty's command began to read it unto him. But being come to the third article the Duke began to startle, and looking with a stern countenance over his shoulders, said, "Sir Robert Cotton, are you come hither to instruct the King and the council," and so stopped his mouth from proceeding any further. Sir Robert, notwithstanding maugre his threats, kneeled down presently to his Majesty, and (the Duke being next to him) delivered the same unto his Majesty's hand and besought his Majesty that he would by no means omit the reading of it over advisedly. Moreover, the same afternoon the Duke seeing his party very strong, and few of the contrary side present, with all his might and main urged that the Lords might presently sit down to consultacion. Whereupon Sir Robert Cotton, kneeling once again before his Majesty, signified unto him that the better half of their number was absent, and

therefore that soe great a business might not be treated in by halves, he humbly besought his Majesty the council might be adjourned till the next day which was Monday last and so the King granted his request against the Duke's motion. On Monday the King carried himself before the Lords so considerately as till the upshot no man could discern by his countenance to which side he inclined. In fine he declared himself in such a manner as it appeared to their Lordships he thoroughly understood the business and so his Majesty went against the Duke and my Lord President taking part withal, as I have heard of the council table besides."

EXTRACTS FROM COTTON'S SPEECH.

"What renown is left to the posterity of Edw. the first in amending the standard, both in purity and weight, from that of older and more barbarous times, must stick as a blemish upon princes that do the contrary. Thus we see it was with Hen. the sixth, who, after he had begun with abating the measure, he after fell to abating the matter, and granted commissions to Missinden and others to practice alchemy to serve his Mint. The extremity of the State in general felt this aggrievance, besides the dishonor it had laid upon the person of the King, was not the least advantage his disloyal kinsman took to grace himself into the people's favor, to his Sovereign's ruin.

"When Hen. the eighth had gained as much of power and glory abroad, of love and obedience at home, as ever any, he suffered shipwreck of all upon this rock.

"When his daughter, Queen Eliz., came to the Crown she was happy in Council to amend that error of her father; for, in a memorial to the Lord Treasurer Burleigh's hand, I find that he and Sir Thomas Smith (a grave and learned man) advising the Queen that it was the honour of her

Crown, and the true wealth of her self and people, to reduce the standard to the antient parity, and purity of her great grandfather, King Edw. fourth. And that it was not the short ends of wit, nor starting holes of devices that can sustain the expence of a monarchy, but sound and solid courses; for so are the words. She followed their advice, and began to reduce the monies to their elder goodness, stiling that work in her first proclamation, Anno 11. A famous act. The next year following, having perfected it as it after stood; she tells her people by another edict, that she had conquered now that monster that had so long devoured them, meaning the variation of the standard; and so long as that said adviser lived, she ever (though often by projectors importuned) could be drawn to any shift or change in the rate of her monies.

"To avoid the trick of permutation, coyn was devised, as a rate and measure of merchandise and manufactures; which if mutable, no man can tell either what he hath or what he oweth, no contract can be certain; and so all commerce, both publique and private, destroyed; and men again enforced to permutation with things not subject to wit or fraud.

"The regulating of coyn has been left to the care of Princes, who are presumed to be ever the fathers of the commonwealth. Upon their honours they are debtors and Warranties of Justice to the subject in that behalf. They cannot, saith Bodin, alter the price of the moneys to the prejudice of the subjects, without incurring the reproach of Faux Monneyeurs. And therefore the stories term Phillip le Bell, for using it, Falsificateur de Moneta. Omino Monetae integritas debet queri ubi vultus noster imprimitur, saith Theodoret the Gothe to his mint-master,

Quidnam erit tutum si in nostra peccetur Effigie? Princes must not suffer their faces to warrant falsehood."

* * * * * * *

"In this last part, which is, the disprofit this enfeebling coyn will bring both to his Majesty and the commonwealth, I must distinguish the monies of gold and silver, as they are bullion or commodities, and as they are measure: The one, extrinsick quality, which is at the King's pleasure, as all other measures, to name: The other the intrinsick quantity of pure metal, which is in the merchant to value. As there the measure shall be either lessened or enlarged, so is the quantity of the commodity that is to exchanged. If then the King shall cut his shilling or pound nominal less than it was before, a less proportion of such commodities as shall be exchanged for it, must be received. It must then of force follow, that all things of necessity, as vitual, apparel, and the rest, as well as those of pleasure, must be inhaunced. If then all men shall receive in their shillings and pounds, a less proportion of silver and gold than they did before this projected alteration, and pay for what they buy a rate inhaunced, it musy cast upon all a double loss."

SIR EDWARD COKE.

After the enactment of 25 Edward III. c. 13, it was unlawful and unconstitutional for the crown to debase the coin. This was the opinion expressed by Sir Edward Coke in his institutes. Coke was one of the greatest of English lawyers. He was Chief Justice of the King's Bench from 1613 to 1616, when he was removed from office because he would not delay a cause at the request of the King. "Full of an extreme reverence for the common law which he knew so well he defended it alike

against the court of chancery, the ecclesiastical courts, and the royal prerogative."

Coke was a member of the House of Commons when the great constitutional question arose between that House and Charles I. over the meaning of the words, "the law of the land." It was claimed by the crown lawyers that persons could be imprisoned by the special command of the King without cause shown; in substance, that the will of the King was the law of the land. This was denied by Coke and other able lawyers in the House of Commons. They argued with great ability and force that the words "per legem terrae" meant "due process of law;" and they finally compelled Charles I. to approve the Petition of Right, 3 Chas. I., c. 1 (1628), recognizing that great principle, which has since become, and will ever continue to be, the most fundamental and important requirement of the Federal and State constitutions of the United States. The royal power to alter the coin was the same kind of arbitrary power as that of imprisonment without cause shown. It was a government by the will or pleasure of the King as distinguished from a government by law. Coke was eternally right when he insisted that the power of the crown to debase the coin had been taken away by 25 Edward III., c. 13.

Coke and his associates claimed in the petition of right that prior statutes, one of which was passed 25 Edw. III., and another 28 Edw. III., had declared that "no person should be compelled to make any loans to the King against his will" and "that no man of what estate or condition that he be, should be put out of his land or tenements nor taken nor imprisoned nor disinherited nor put to death without being brought to answer by due process of law," and Charles I. in assenting to the petition merely recognized and confirmed what was already the law.

Charles I. had so quickly retraced his steps on the question of debasement, in 1626, that there was no grievance in that respect to be corrected by the Petition of Right, or doubtless it would have been covered by that famous statute. The action of Elizabeth in 1560 in restoring the standard of value to its former weight and purity, and the prompt and decisive action of Charles I. in 1626 in recalling the debased coins, had completely settled the constitutional policy of England on this subject, at about the time the English colonization of America began.

In *East's Pleas of the Crown*, first published in 1716, the author at p. 148 makes this conservative statement:

"The coining and legitimation of money and giving it its current value are the unquestionable prerogatives of the crown; though great doubt has been entertained whether by force of the Stat. 25 Edw. III., c. 13, the 9 Hen. V., st. 2, c. 6, and other acts settling the standard of sterling, the King is not now restrained from altering it by increasing the alloy. But at this day it is the less necessary to consider the point, because the impolicy of the act is alone sufficient to prevent the attempt from being made; unless the marketable and relative value of gold and silver should sensibly alter."

Sir William Blackstone, *1 Com., 278*, writing about 1758 said:

"And of this sterling or esterling metal all the coin of the Kingdom must be made by statute 25 Edw. III., c. 13. So that the King's prerogative seemeth not to extend to the debasing or enhancing the value of the coin below or above the sterling value (citing Coke), though Sir Mathew Hale (1 Hale's P. C., 194) appears to be of another opinion."

In *Cooley's Edition of Blackstone's Com.* there is the following note:

(Lord Hale refers to the case of mixed money in Davies' Reports, 48, in support of his opinion. A person in Ireland had borrowed 100 *l.* of sterling money and had given a bond to repay it on a certain future day. In the meantime Queen Elizabeth for the purpose of paying her armies and creditors in Ireland had coined mixed or base money, and by her proclamation had ordered it to pass current and had cried down the former coin. The debtor on the appointed day tendered 100 *l.* in this base coin; and it was determined upon great consideration that it was a legal tender, and that the lender was obliged to receive it. Natural equity would have given a different decision.)

The Mixed Money case, *Davies Report, p. 48*, is a very instructive one. The six different advisory "Resolves" adopted by the council are an essay on coined moneys and are well worth perusal. A full examination of the case will convince anyone that the case turned upon the terms of the contract between the parties, and that it was not held that the Crown could by debasing or enhancing the coin, alter or impair a contract or obligation. Both Coke and Hale in their comment on the statute, had in mind the question whether, after the enactment of the statute, the Crown had any power to alter the weight or fineness of the coin of the realm. Hale admitted the statute was against it. His comments were not particularly directed, however, towards the question whether an alteration in the coin (assuming the Crown had power to alter it), could impair the obligation of a contract, and it is not clear that he included such an effect on contracts as one of the results of a debasement.

In this connection it must be remembered that until the Act of Settlement the judges in England held their

offices at the pleasure of the Crown; that during the Long Parliament and the civil wars, Hale was neutral; that he was graciously received by Charles II. and by him elevated to the bench. It is safe to assume that Hale was a friend of prerogative power as Coke had been its enemy.

Creasy in his valuable work on the English Constitution, p. 273, sums up the condition of the bench in the time of Charles II. as follows:

"There are indeed few periods in our history more discreditable and more unpleasing to dwell on than the twenty years between the Restoration and the Revolution. They must certainly be studied in order to fully perceive the necessity and to rightfully appreciate the benefits of that last mentioned great event."

THE CASE OF MIXED MONEY.

The facts in the Mixed Money case were as follows:

In April, 1601, "One Brett, of Drogheda, merchant, having bought certain wares of one Gilbert in London, became bound to the said Gilbert in an obligation of 200 *l.* on condition that he should pay to said Gilbert, his executors or assigns, 100 *l.* sterling, *current and lawful money* of England, at the tomb of Earl Strongbow, in Christ Church, Dublin, at a certain day to come."

Before the day of payment arrived Queen Elizabeth sent a large amount of debased or mixed money into Ireland to pay her army, and by proclamation declared this mixed money to be the lawful and current money of the Kingdom of Ireland.

When the bond become due Brett made a tender of the 100 *l.* in the mixed money of the new standard in performance of the condition of his obligation, and the question whether this tender was sufficient was the question

at the Council table, where Gilbert exhibited his petition against Brett for the speedy recovery of his debt.

The sixth resolve of the Council is in part as follows, pp. 72, 75:

"Sixthly and lastly, it was resolved, that although at the time of the contract and obligation made in the present case, pure money of gold and silver was current within this Kingdom, where the place of payment was assigned; yet the mixed money being established in this Kingdom before the day of payment, may well be tendered in discharge of the said obligation, and the obligee is bound to accept it; and if he refuses it, and waits until the money be changed again, the obligor is not bound to pay other money of better substance, but it is sufficient if he be always ready to pay the mixed money according to the rate for which they were current at the time of the tender. And this point was resolved on the consideration of two circumstances, viz., the time and place of the payment; for the time is future, viz., *that if the said Brett shall pay or cause to be paid* 100 *l.* sterling, *current money*, etc., and therefore such money shall be paid as shall be current at such future time; so that the time of payment, and not the time of the contract shall be regarded."

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"But it was said that, although in contracts, these words *curentis monetae* shall relate to the time of the payment; yet in wills, they shall relate to the time of making the will; for the benefit is in the present tense, *I give and bequeath*, etc., and therefore legacies shall be paid in such money as is current at the time of the making the testament, or according to the rate thereof. It was also said, that if a man hath 1,000 *l.* of pure silver in marriage with his wife, and afterwards they are divorced *causa praecontractus*, by which the wife is to receive her portion; or if

a man recovers by an erroneous judgment 100 *l.* in debt, and hath execution in pure silver money, and afterwards the judgment is reversed, so that he is to be restored to all that he hath lost, although base money be established in the mean time, *restitution shall be in such money as was current at the time of the marriage, and at the time of the recovery.* But these later cases were not resolved."

COMMONWEALTH OF ENGLAND.

ACT OF JULY 17, 1649.

"An Act Touching the Moneys and Coyns of England.

Whereas, the ordering of moneys and coyns, and letting the same at such valuations and prizes as shall be thought convenient and necessary, is appropriate and of right belonging to the Sovereign and Supreme Authority of this Commonwealth; and the Parliament having resolved to change and alter the former stamps, arms, pictures, with the mottos, words, stiles and inscriptions in and about the same, and to cause new coyns of gold and silver to be made of several stamps, weights and values, but of one uniform standard and alloy, to be current within this State and Commonwealth of England; (that is to say) one piece of gold of the value of twenty shillings sterling, to be called the twenty shillings piece, stamped on the one side with the cross and a palm and laurel, with these words, The Commonwealth of England; and on the other side with the cross and harp, with these words, God with us; one other piece of gold money of ten shillings, to be called the ten shillings piece; and one other piece of gold money of ten shillings, to be called the five shillings piece, with the same words, inscriptions, pictures and arms on each side as the former; and for silver moneys, pieces of five shillings, and pieces of two shillings and

sixpence, and pieces of twelve pence, and pieces of sixpence, having the same words, inscriptions, pictures and arms on each side as the former; also pieces of twopence, and one penny, having the same pictures and arms as the former, without any words or inscriptions; and the halfpenny having on the one side a cross, and on the other side a harp; all which several coyns of gold and silver, the Parliament doth hereby enact, declare, publish and authorize to be amongst others heretofore used, the moneys current for this State and Commonwealth of England, to be used and received by all the people of this nation, in all receipts and payments, and in all manner of traffiquing, bargaining and dealing between man and man, at the several rates and values contained in the schedule or table hereunto annexed, expressing their true values and weights, according to the account of the mint within the Tower of London:

		Pennyweights, 20.	Grains, 24.	Mites, 20.	Drolts, 24.	Perits, 20.	Blanks, 24.
PIECES OF GOLD.	S. XX	05	20	10	00	00	00
	S. X	02	22	05	00	00	00
	S. V	01	11	02	12	00	00

PIECES OF SILVER.	S. V	19	08	10	08	00	00
	S. d. iivi	09	16	05	04	00	00
	d. XII	03	20	18	01	10	00
	d. VI	01	22	09	00	15	
	d. II	00	15	09	16	05	
	d. I	00	07	14	20	20	12
	ob	00	03	17	10	10	06

Memorandum—Twelve ounces make a pound weight Troy; twenty pennyweight makes an ounce; twenty-four grains makes a pennyweight; twenty mites makes a grain; twenty-four droits makes a mite; twenty perits makes a droit; twenty-four blanks makes a perit."

Scobell's Acts, pp. 18-20.

18 CHARLES II. c. 5 (1666).

This act provided for the free and unlimited coinage of all gold and silver bullion brought to the mint by any person.

The provisions regulating the weight and fineness of the coinage are as follows:

"So that for every pound troy of crown or standard gold that shall be brought in and delivered by him or

them to the assayer, melted down and coined as aforesaid there shall be delivered out to him or them respectively a pound troy of the current coins of this kingdom of crown or standard gold; and for every pound troy of sterling or standard silver that shall be brought in and delivered by him or them to be assayed, melted down and coined as aforesaid there shall be delivered out to him or them respectively a pound troy of the current coins of this kingdom of sterling or standard silver and so proportionably for a greater or less weight; and for every pound troy of gold or silver that shall be brought in and delivered to be assayed, melted down and coined as aforesaid that shall be finer upon assay than crown gold or standard silver, there shall be delivered for the same so much more than a pound troy as the same doth in proportion amount unto in fineness and value; and for every pound troy of gold or silver that shall be brought in and delivered to be assayed, melted down and coined as aforesaid that shall be coarser or baser upon assay, or worse in value than crown gold or standard silver, there shall be delivered for the same so much less than a pound troy as the same doth fall short in fineness or value and so for a greater or lesser quantity."

8 Eng. Stat., 228.

THE GREAT RE-COINAGE OF 1695-1696.

One of the most entertaining and instructive things in Macaulay's History of England is that part of Chap. 21, which gives an account of the impaired and debased condition of the silver coinage after the revolution of 1688, and of the discussion which finally resulted in its reformation by the re-coinage of 1696.

Macaulay's statement of the condition of affairs which confronted William III. and his ministers is clear and complete.

EXTRACT FROM CHAP. 21, MACAULAY'S HISTORY OF ENGLAND.

"Till the reign of Charles II. our coin had been struck by a process as old as the thirteenth century. Edward I. had invited hither skillful artists from Florence, which, in his time, was to London what London, in the time of William III. was to Moscow. During many generations, the instruments which were then introduced into our mint continued to be employed with little alteration. The metal was divided with shears, and afterwards shaped and stamped by the hammer. In these operations much was left to the hand and eye of the workman. It necessarily happened that some pieces contained a little more and some a little less than the just quantity of silver; few pieces were exactly round; and the rims were not marked. It was, therefore, in the course of years discovered that to clip the coin was one of the easiest and most profitable kinds of fraud. In the reign of Elizabeth it had been thought necessary to enact that the clipper should be, as the coiner had long been, liable to the penalties of high treason. The practice of paring down money, however, was far too lucrative to be so checked; and, about the time of the Restoration, people began to observe that a large proportion of the crowns, half crowns and shillings which were passing from hand to hand had undergone some slight mutilation.

"That was a time fruitful of experiments and inventions in all the departments of science. A great improvement in the mode of shaping and striking the coin was suggested. A mill, which to a great extent superseded the human hand, was set up in the Tower of London.

This mill was worked by horses, and would doubtless be considered by modern engineers as a rude and feeble machine. The pieces which it produced, however, were among the best in Europe. It was not easy to counterfeit them; and, as their shape was exactly circular, and their edges were inscribed with a legend, clipping was not to be apprehended. The hammered coins and the milled coins were current together. They were received without distinction in public, and consequently in private, payments. The financiers of that age seem to have expected that the new money, which was excellent, would soon displace the old money which was impaired. Yet any man of plain understanding might have known that, when the state treats perfect coin and light coin as of equal value, the perfect coin will not drive the light coin out of circulation, but will itself be driven out. A clipped crown, on English ground, went as far in the payment of a tax or a debt as a milled crown. But the milled crown, as soon as it had been flung into the crucible or carried across the channel, became much more valuable than the clipped crown. It might, therefore, have been predicted, as confidently as anything can be predicted which depends on the human will, that the inferior pieces would remain in the only market in which they could fetch the same price as the superior pieces, and that the superior pieces would take some form or fly to some place in which some advantage could be derived from their superiority.

"The politicians of that age, however, generally overlooked these very obvious considerations. They marvelled exceedingly that everybody should be so perverse as to use light money in preference to good money. In other words, they marvelled that nobody chose to pay twelve ounces of silver when ten would serve the turn. The horse in the tower still paced his rounds. Fresh wagonloads of choice money still came forth from the mill; and

still they vanished as fast as they appeared. Great masses were melted down; great masses exported; great masses hoarded; but scarcely one new piece was to be found in the till of a shop, or in the leathern bag which the farmer carried home from the cattle fair. In the receipts and payments of the Exchequer the milled money did not exceed ten shillings in a hundred pounds. A writer of that age mentions the case of a merchant who, in the sum of thirty-five pounds, received only a single half crown in milled silver. Meanwhile the shears of the clippers were constantly at work. The coiners, too, multiplied and prospered; for the worse the current money became the more easily it was imitated. During more than thirty years this evil had gone on increasing. At first it had been disregarded; but it had at length become an insupportable curse to the country. It was to no purpose that the rigorous laws against coining and clipping were rigorously executed. At every session that was held at the Old Bailey terrible examples were made. Hurdles, with four, five, six wretches convicted of counterfeiting or mutilating the money of the realm, were dragged month after month up Holborn Hill. On one morning seven men were hanged and a woman burned for clipping. But all was vain."

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"The convictions, numerous as they might seem, were few indeed when compared with the offenses; and the offenders who were convicted looked on themselves as murdered men, and were firm in the belief that their sin, if sin it were, was as venial as that of a schoolboy who goes nutting in the wood of a neighbor. All the eloquence of the ordinary could seldom induce them to conform to the wholesome usage of acknowledging in their dying speeches the enormity of their wickedness.

"The evil proceeded with constantly accelerating velocity. At length, in the autumn of 1695, it could hardly be said that the country possessed, for practical purposes, any measure of the value of commodities. It was a mere chance whether what was called a shilling was really tenpence, sixpence or a groat. The results of some experiments which were tried at that time deserve to be mentioned. The officers of the Exchequer weighed fifty-seven thousand two hundred pounds of hammered money which had recently been paid in. The weight ought to have been above two hundred and twenty thousand ounces. It proved to be under one hundred and fourteen thousand ounces. Three eminent London goldsmiths were invited to send a hundred pounds each in current silver to be tried by the balance. Three hundred pounds ought to have weighed about twelve hundred ounces. The actual weight proved to be six hundred and twenty-four ounces. The same test was applied in various parts of the kingdom. It was found that a hundred pounds, which should have weighed about four hundred ounces, did actually weigh at Bristol two hundred and forty ounces, at Cambridge two hundred and three, at Exeter one hundred and eighty, and at Oxford only one hundred and sixteen."

Macaulay gives a graphic account of the evils produced by this condition of the coin of the realm, and of the efforts for reform, and of the influence of John Locke thereon. He refers to the controversy between Locke and William Lowndes, the Secretary of the Treasury, as follows:

"Those politicians whose voice was for delay gave less trouble than another set of politicians, who were for a general and immediate re-coinage, but who insisted that the new shilling should be worth only ninepence or ninepence halfpenny. At the head of this party was William Lowndes, Secretary of the Treasury, and member of Par-

liament for the borough of Seaford, a most respectable and industrious public servant, but much more versed in the details of his office than in the higher parts of political philosophy. He was not in the least aware that a piece of metal with the King's head on it was a commodity of which the price was governed by the same laws which govern the price of a piece of metal fashioned into a spoon or buckle, and that it was no more in the power of Parliament to make the kingdom richer by calling a crown a pound than to make the kingdom larger by calling a furlong a mile. He seriously believed, incredible as it may seem, that, if the ounce of silver were divided into seven shillings instead of five, foreign nations would sell us their wares and their silks for a smaller number of ounces. He had a considerable following, composed partly of dull men who really believed what he told them, and partly of shrewd men who were perfectly willing to be authorized by law to pay a hundred pounds with eighty. Had his arguments prevailed, the evils of a vast confiscation would have been added to all the other evils which afflicted the nation; public credit, still in its tender and sickly infancy, would have been destroyed; and there would have been much risk of a general mutiny of the fleet and army. Happily Lowndes was completely refuted by Locke in a paper drawn up for the use of Somers. Somers was delighted with this little treatise, and desired that it might be printed. It speedily became the text book of all the most enlightened politicians in the Kingdom, and may still be read with pleasure and profit. The effect of Locke's forcible and perspicuous reasoning is greatly heightened by his evident anxiety to get at the truth, and by the singularly generous and graceful courtesy with which he treats an antagonist of powers far inferior to his own. Flamsteed, the Astronomer Royal, de-

scribed the controversy well by saying that the point in dispute was whether five was six or only five."

Prof. Bastable, in his article on money in the Encyclopaedia Britannica, refers to Lowndes' proposition as follows:

"The most remarkable of the unsuccessful schemes of debasing the standard of value was that of Lowndes, which was advanced in 1695 when the discussions preparatory to the coinage of 1696 were being carried on. Lowndes' plan was to coin the pound troy of standard silver into 77s 6d, thus debasing it 25 per cent. He was resisted by Locke, who, in his "Further considerations concerning raising the value of money," contributed materially to the development of monetary theory; and the re-coinage was, mainly in consequence of his efforts in combination with those of Newton and Montaque, based on thoroughly sound principles."

Macaulay and Bastable are both unjust to Lowndes, as is clearly shown by Prof. Shaw in his "Select Tracts and Documents Illustrative of English Monetary History, 1626-1730," (pp. 117-123) published by Clement Wilson, London, 1896. As stated by Macaulay, the general clipping and hammering of the coin had resulted in a reduction in the standard of value, and prices of everything had risen on account of it. Lowndes recognized this fact and proposed to adjust the coinage to it, so as not to disturb the then actual standard. This is an important distinction which will be further considered in the next subdivision of this brief.

7 & 8 WILL. III. c. 1 (1695).

This act provided for the re-coinage of the clipped money, the new coins "to hold such weight and fineness as are prescribed by the present indenture with his majesty's master and worker for making of silver moneys

at the Tower of London; and with such allowance called the remedy as is given to the said master by the said indenture, which weight and fineness are hereby declared to be and shall remain to be the standard of and for the lawful silver coin of this kingdom."

9 Eng. Stat., 381.

This act only provided for the re-coinage of clipped money. Money made with the hammer not being clipped was required by a certain date "to be struck through about the middle of every piece, with a solid punch that shall make a hole without diminishing the silver." After the date named no unclipped hammered money was to be current unless it had been so struck through, and no person was permitted to "tender or receive the same in payment."

9 Eng. Stat., 385.

Later in the same session of Parliament another act was passed relative to the re-coinage. The last two sections of the act are as follows :

7 & 8 WILL., III., C. 1. (1696.)

"XI. And to the end the subject, after so great a contribution and charge for making good the deficiency of clipt money, may not remain under any part of the mischiefs which the continuance of the currency of such money will occasion, be it further enacted, that whosoever, after the fourth day of May, one thousand six hundred and ninety-six, shall take or receive any such clipt money, otherwise than according to the directions, and in pursuance of an act of this present session of Parliament, intituled, an act for remedying the ill state of the coin of the kingdom, in any payment whatsoever, as if it

were lawful money, shall forfeit double the value of the silver so received, to the use of such person as will inform or prosecute for the same, to be recovered in such manner and form as the forfeiture for uttering money clipt, after a hole has been punched through it, in pursuance of an act made in this present session of parliament, is directed to be recovered by the said act; and the justices of the peace are hereby empowered to hear and determine such information or prosecution accordingly."

"XII. And whereas, the uncertain value of coined gold has been highly prejudicial to trade, and an encouragement to certain evil disposed persons to raise and fall the same, to the great prejudice of the landed men of this kingdom; be it therefore enacted by the authority aforesaid, that from and after the 10th day of April, one thousand six hundred and ninety-six, no person shall utter or receive any of the pieces of gold coin, commonly called guineas, at any higher or greater rate or value than two and twenty shillings for each guinea, and so proportionably for every greater or lesser piece of coined gold; and whosoever shall offend herein shall incur the penalties and forfeitures provided in an act made in this present parliament, for those that shall receive or pay guineas, and other pieces of coined gold, at a greater or higher rate than in that act is directed, to be recovered by the same ways and means that the penalties and forfeitures of that act are to be or may be recovered."

9 Eng. Stat., 416.

8 WILL., III., C. 1, 2. (1696.)

The preamble to the first chapter of this act contains the recital that the price of guineas has become reduced to or near the standard, and that sundry persons desire to coin gold and to import great quantities of guineas

and half guineas, "which will be very beneficial to the trade and commerce of the kingdom."

The second chapter provides for the re-coinage of the hammered coin.

10 Eng. Stat., 1, 2.

Another act relative to the hammered coin was passed in 1697. (9 Will. III., c. 2.)

10 Eng. Stat., 121.

9 & 10 WILL., III., C. 21. (1698.)

"*An Act for the Better Preventing the Counterfeiting, Clipping, and Other Diminishing the Coin of this Kingdom.*

Whereas, the preventing the currency of clipt and unlawfully diminished, and counterfeit money, is a more effectual means to preserve the coin of this kingdom intire and pure, than the most rigorous laws for the punishment of such as diminish or counterfeit the same; and whereas, by the known laws of this kingdom no person ought to pay, or knowingly tender in payment, any counterfeit or unlawful diminished money, and all persons not only may refuse to receive the same, but may, and by the ancient statutes and ordinances of this kingdom have been required to destroy and deface the same; and more especially the tellers in the receipt of the Exchequer, by their duty and oath of office, are required to receive no money but good and true; and to the end the same might the better be discerned and known, by the ancient course of the said receipt of the Exchequer all money ought to be received there by weight as well as by tale; for the restoring of which course, together with other things, an act was made in the last session of this present parliament, intituled, An act for the better observation of the

course anciently used in the receipt of the Exchequer, whereby amongst other things it is enacted, That the respective tellers of the said receipt of the Exchequer, when any money shall be brought to the said receipt of the Exchequer, to be there paid, shall without delay receive it, weighing the same in intire sums or otherwise, and making due entry of the weight and tale thereof, according to the ancient course; but no provision is made in the said act, that the said tellers shall refuse to receive the said money, in case it shall not be of its due weight; and the former and ancient laws being grown into desuetude, whereby unlawfully diminished and counterfeit money receive a currency, and wicked and traitorous persons are encouraged to diminish and counterfeit the same; now to the end the kingdom, after so vast a charge and expense for the reformation of the silver coin, and restoring it to its due weight and purity, may not relapse into the same evil, from which it hath been so lately delivered with great difficulty and hazard, and that counterfeit and unlawfully diminished money, which already begins to increase, may be defaced and destroyed, be it declared and enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by authority of the same, That it is and shall be lawful to and for any person, to whom any silver money shall be tendered, any piece or pieces whereof shall be diminished, otherwise than by reasonable wearing, or that by the stamp, impression, colour, or weight thereof, he shall suspect to be counterfeit, to cut, break, or deface such piece or pieces; and if any piece so cut, broken, or defaced, shall appear to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight, and appear to be lawful money, the person that cut, broke, or defaced the same, shall, and is

hereby required to take and receive the same at the rate it was coined for; and if any question or dispute shall arise, whether the piece so cut be counterfeit, it shall be heard and finally determined by the mayor, bailiff or bailiffs, or other chief officer of any city or town corporate, where such tender shall be made; and if such tender shall be made out of any city or town corporate, then by the next justice of the peace of the county, inhabiting or being near the place where such tender shall be made; and the said mayor, or other chief officer, and justice of the peace, shall have full power and authority to administer an oath, as he shall see convenient, to any person, for the determining any questions relating to the said piece.

II. And be it further enacted by the authorities aforesaid, That the tellers of the receipt of the Exchequer, and their deputies and clerks, and receivers general of every branch of his Majesty's revenue, aids, impositions, duties, and taxes, given or granted, or to be hereafter given or granted, shall and are hereby required, to cut, break, or deface, or cause to be cut, broken, or defaced, every piece of counterfeit, or unlawfully diminished, silver money, that shall be tendered in payment to them to the use of his Majesty, his heirs or successors, or for any part of the revenue, aids, impositions, duties, or taxes of his Majesty, his heirs or successors; and the better to discover silver money that is counterfeit, or unlawfully diminished, from that which is good and true, the tellers and receivers general, and their respective deputies and clerks, *shall weigh in whole* sums, or otherwise all silver money by them received; and if the same, or any piece thereof, shall, by the weight or otherwise appear to be counterfeit, or unlawfully diminished, the same shall not be received by or from them in the said receipt of the Exchequer, nor be allowed them upon their respective accounts."

10 Eng. Stat., 143.

6 ANN., C. 30. (1707).

"*An Act for Ascertaining the Rates of Foreign Coins in Her Majesty's Plantations in America.*

Whereas, for remedying the inconveniences which had arisen from the different rates at which the same species of foreign silver coins did pass in her Majesty's several colonies and plantations in America, her most excellent Majesty has thought fit by her royal proclamation, bearing date the eighteenth day of June, one thousand seven hundred and four, and in the third year of her reign, to settle and ascertain the currency of foreign coins in her said colonies and plantations, in the manner and words following:

We having had under our consideration the different rates at which the same species of foreign coins do pass in our several colonies and plantations in America, and the inconveniences thereof, by the indirect practice of drawing the money from one plantation to another, to the great prejudice of the trade of our subjects; and being sensible that the same cannot be otherwise remedied, than by reducing of all foreign coins to the same current rate within all our dominions in America; and the principal officers of our mint having laid before us a table of the value of the several foreign coins which usually pass in payments in our said plantations, according to their weight, and the assays made of them in our mint, thereby showing the just proportion which each coin ought to have to the other, which is as followeth, viz.: Sevil pieces of eight, old plate, seventeen penny-weight twelve grains, four shillings and sixpence; sevil pieces of eight, new plate, fourteen penny-weight, three shillings, seven pence, one farthing; Mexico pieces of eight, seventeen penny-weight twelve grains, four shillings and six pence; Pillar

pieces of eight, seventeen penny-weight twelve grains, four shillings and six pence three farthings; Peru pieces of eight, old plate, seventeen penny-weight twelve grains, four shillings and five pence, or thereabouts; cross dollars, eighteen penny-weight, four shillings and four pence three farthings; ducatoons of Flanders, twenty penny-weight and twenty-one grains, five shillings and six pence; ecu's of France, or silver Lewis, seventeen penny-weight twelve grains, four shillings and six pence; crusadoes of Portugal, eleven penny-weight four grains, two shillings and ten pence one farthing; three gilder pieces of Holland, twenty penny-weight and seven grains, five shillings and two pence one farthing; old rix dollars of the empire, eighteen penny-weight and ten grains, four shillings and six pence; the halfs, quarters, and other parts in proportion to their denominations, and light pieces in proportion to their weight; we have therefore thought fit for remedying the said inconveniences, by the advice of our council, to publish and declare, That from and after the first day of January next ensuing the date hereof, no Sevil, Pillar, or Mexico pieces of eight, though of the full weight of seventeen penny-weight and an half, shall be accounted, received, taken, or paid within any of our said colonies or plantations, as well those under proprietors and charters, as under our immediate commission and government, at above the rate of six shillings per piece current money for the discharge of any contracts or bargains to be made after the said first day of January next, the halfs, quarters and other lesser pieces of the same coins to be accounted, received, taken, or paid in the same proportion; and the currency of all pieces of eight of Peru, dollars, and other foreign species of silver coins, whether of the same or baser alloy, shall, after the said first day of January next, stand regulated, according to their weight and fineness, according and in proportion to the rate before

limited and set for the pieces of eight of Sevil, Pillar, and Mexico; so that no foreign silver coin of any sort be permitted to exceed the same proportion upon any account whatsoever; and we do hereby require and command all our governors, lieutenant governors, magistrates, officers, and all other our good subjects, within our said colonies and plantations, to observe and obey our directions herein, as they tender our displeasure.

II. And whereas, notwithstanding the said proclamation, the same indirect practices as are therein mentioned, are still carried on within some of the said colonies or plantations, and the money thereby drawn from one plantation to another, in prejudice of the trade of her Majesty's subjects; wherefore for the better inforcing the due execution of her Majesty's said proclamation throughout all the said colonies and plantations, and for the more effectual remedying the said inconveniences thereby intended to be remedied, be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same. That if any person within any of the said colonies or plantations, as well those under proprietors and charters, as under her Majesty's immediate commission and government, shall after the first day of May, which shall be in the year of our Lord one thousand seven hundred and nine, for the discharge of any contracts or bargains to *be thereafter made* account, receive, take, or pay any of the several species of foreign silver coins mentioned in the before recited proclamation, at any greater or higher rate than at which the same is thereby regulated, settled, and allowed, to be accounted, received, taken, or paid, every such person so accounting, receiving, taking, or paying the same contrary to the directions therein contained, shall suffer six months imprisonment,

without bail or mainprize; any law, custom, or usage in any of the said colonies or plantations to the contrary hereof in any wise notwithstanding; and shall likewise forfeit the sum of ten pounds for every such offense; one moiety thereof to her Majesty, her heirs and successors; the other moiety to such person or persons as shall sue for the same, to be recovered with full costs of suit, by action of debt, bill, plaint, or information, in any of her Majesty's courts of justice within any of the said plantations, or in any of the courts of justice of the charter or proprietary governments where such offense shall be committed.

III. Provided nevertheless, and it is hereby declared, That nothing in the before recited proclamation or in this act contained shall extend, or be construed to compel any person to receive any of the said species of foreign silver coins, at the respective rates in the said proclamation mentioned.

IV. Provided also, and it is hereby further declared, That nothing in this act contained shall extend, or be construed to restrain her Majesty from regulating and settling the several rates of the said species of foreign silver coins within any of the said colonies or plantations, in such other manner, and according to such other rates and proportions as her Majesty by her royal proclamation for that purpose to be issued, shall from time to time judge proper and necessary, or from giving her royal assent to any law hereafter to be made in any of the said colonies or plantations, for settling and ascertaining the current rates of such coins within the said colonies or plantations; but that such further regulations may be made, and such assent given, in as full and ample manner, to all intents and purposes, as the same might have been done in case this act had not been made, and not other-

wise; anything herein before contained to the contrary hereof in anywise notwithstanding."

11 Eng. Stat., 412.

24 GEO., II., C. 53. (1751.)

"*An Act to Regulate and Restrain Paper Bills of Credit in His Majesty's Colonies or Plantations of Rhode Island and Providence Plantations, Connecticut, the Massachusetts Bay and New Hampshire, in America; and to Prevent the Same Being Legal Tenders in Payments of Money.*

Whereas, the act of parliament made in the sixth year of her late majesty, Queen Anne, intituled, An act for ascertaining the rate of foreign coins in her Majesty's plantations in America, hath been entirely frustrated in his Majesty's said colonies of Rhode Island and Providence plantations, Connecticut, the Massachusetts Bay, and New Hampshire in America, by their creating and issuing, from time to time, great quantities of paper bills of credt, by virtue of acts of assembly, orders, resolutions or votes, made or passed by their respective assemblies, and making legal the tender of such bills of credits in payment for debts, dues and demands; which bills of credit have, for many years past, been depreciating in their value, by means whereof all debts of late years have been paid and satisfied with a much less value than was contracted for, which hath been a great discouragement and prejudice to the trade and commerce of his Majesty's subjects, by occasioning confusion in dealings, and lessening of credit in those parts; therefore, for the more effectual preventing and remedying of the said inconveniences, may it please your most excellent Majesty, that it may be enacted; and be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present par-

liament assembled, and by the authority of the same, That from and after the twenty-ninth day of September, one thousand seven hundred and fifty-one, it shall not be lawful for the governor, council or assembly for the time being, or any of them, or for the lieutenant governor, or person presiding or acting as governor or commander-in-chief, for the time being, within all or any of the aforesaid colonies for plantations of Rhode Island, and Providence plantations, Connecticut, the Massachusetts Bay, and New Hampshire, to make or pass, or give his or their assent to the making or passing of any act, order, resolution, or vote, within any of the said colonies or plantations, whereby any paper bills or bills of credit, of any kind or denomination whatsoever, shall be created or issued under any pretence whatsoever; or whereby the time limited, or the provision made for the calling in, sinking or discharging of such paper bills, or bills of credit, as are already subsisting and passing in payment, within any of the said colonies or plantations, shall be depreciated in value, or whereby the same shall be ordered or allowed to be reissued, or to obtain a new and further currency; and that all such acts, orders, resolutions or votes, which shall or may be passed or made, after the said twenty-ninth day of September, one thousand seven hundred and fifty-one, within all or any of the said colonies or plantations, shall be, and are hereby declared to be null and void, and of no force or effect whatsoever.

II. And be it further enacted by the authority aforesaid, That all such paper bills, or bills of credit, as are now subsisting, and passing in payments, within any of the said colonies or plantations of Rhode Island, and Providence plantations, Connecticut, Massachusetts Bay and New Hampshire, shall be duly and punctually called in, sunk and discharged, according to the tenor of and

within the periods limited by the respective acts, orders, votes or resolutions, for creating and issuing, or continuing the same respectively, unless where the same have been altered by any subsequent act or acts of assembly; and in that case, that the same be discharged according to the tenor mentioned in the said act or acts of assembly; and that no such paper bills, or bills of credit, shall, from and after such periods so limited, as aforesaid, be any longer current in all or any of the said colonies or plantations respectively.

III. Provided nevertheless, That nothing in this act contained shall extend, or be construed to extend, to restrain any governor or governors, council or assembly, within any of the said colonies or plantations, from making or passing any act or acts of assembly in any of the said colonies or plantations, for the creating and issuing of such paper bills, or bills of credit, in lieu of, and for securing such reasonable sum or sums of money, as shall be requisite for the current service of the year; so as by such act or acts of assembly, whereby such paper bills, or bills of credit, shall be created or issued, sufficient provision be made to secure the calling in, discharging and sinking of the same, within a short reasonable time, not exceeding the space of two years, to be computed from the dates of the respective acts whereby such paper bills, or bills of credit, were created and issued; anything herein before contained to the contrary thereof in anywise notwithstanding.

IV. Provided also, That nothing herein contained shall extend, or be construed to extend to restrain any governor or governors, council or assembly, within any of the said colonies or plantations, from making or passing any act or acts of assembly, in any of the said colonies or plantations, for creating and issuing such paper

bills, or bills of credit, in lieu of and for securing such reasonable sum or sums of money as shall, at any time hereafter, be necessary or expedient upon sudden and extraordinary emergencies of government, in case of war or invasion, so as in every such act or acts of assembly for the emission of paper bills, or bills of credit, so issued as aforesaid, due care be taken to ascertain the real value of all such principal sum or sums for which the same shall be so made, created and issued as aforesaid, and also the interest to be paid thereon; and so as care be likewise taken, in the said act or acts, to establish and provide an ample and sufficient fund for the calling in, discharging and sinking, within as short and reasonable a time as may be, not exceeding five years at the farthest, all the said bills, by actual payment of all and every the sum and sums of money for which the same shall be so made, created and issued as aforesaid, with the interest due thereon.

V. And whereas, there are now subsisting and passing in payment, within the said colonies and plantations, divers kinds of paper bills, or bills of credit, of various denominations, which have been heretofore created and issued within the said colonies and plantations, or some of them, on loans and otherwise, whereby private persons and their estates stand liable to, and bound for the discharge of the sums by them borrowed and received on such loans; without the payment of which sums (in case any difficulty or obstruction should arise in the payment thereof) such paper bills, or bills of credit so issued on such loans, cannot be called in, discharged and sunk, according to the tenor of the respective acts, orders, votes or resolutions, by virtue whereof the same have been so respectively issued; for the providing a remedy for such inconveniencies, be it further enacted by the au-

thority aforesaid, That all such paper bills, or bills of credit, of what kind or denomination soever, which have at any time heretofore been created and issued on such loans, within any of the said colonies and plantations, be duly called in, and discharged and sunk, according to the tenor of the respective acts, orders, votes, or resolutions, for creating and issuing, or continuing the same respectively, in like manner as all other paper bills or bills of credit, already subsisting within the said colonies or plantations, are herein before required to be called in, discharged and sunk.

VI. And be it further enacted by the authority aforesaid, That all persons who have borrowed and taken up any sum or sums of money on loans, for the discharge whereof they and their respective estates stand bound, shall be required and compelled, by all due and legal means, to satisfy and discharge the sums by them borrowed, according to the terms of such loans respectively, and the true intent and meaning thereof, except as is herein before excepted; and in case any deficiency or loss shall happen by failure of the security so taken on such loans respectively, that the same, and every part thereof, shall be supplied and made good by an adequate tax or imposition, to be equally and rateably assessed, levied and raised within the said colonies or plantations respectively, where such loss or deficiency shall so happen.

VII. And be it further enacted by the authority aforesaid, That from and after the twenty-ninth day of September, one thousand seven hundred and fifty-one, no paper currency, or bills of credit, of any kind or denomination, which may be made, created or issued in any of the said colonies or plantations, pursuant to the provisions hereinbefore made in this act, shall be a legal tender in payment of any private bargains, contracts, debts, dues

or demands whatsoever, within the said colonies or plantations, or any of them.

VIII. Provided, That nothing herein contained shall extend, or be construed to extend to make any of the bills now subsisting in any of the said colonies a legal tender.

IX. And be it further enacted by the authority aforesaid, That if any governor or commander-in-chief for the time being, in all or any of his Majesty's said colonies or plantations, whether commissioned by his Majesty, or elected by the people, shall, from and after the said twenty-ninth day of September, one thousand seven hundred and fifty-one, give his assent to any act of assembly, order, resolution or vote, for the emission or issuing of any paper bills, or bills of credit, of any kind or denomination whatsoever; or for prolonging the time limited for calling in and sinking any such paper bills, or bills of credit, as are now subsisting and passing in payment; or for re-isuing or depreciating the same, contrary to the true intent and meaning of this act; such act, order, resolution or vote, shall be ipso facto null and void, and such governor or commander-in-chief shall be immediately dismissed from his government, and forever after rendered incapable of any publick office or place of trust."

20 Eng. Stat., 306.

4 GEO., III., C. 34. (1764.)

"*An Act to Prevent Paper Bills of Credit, Hereafter to be Issued in any of His Majesty's Colonies or Plantations in America, from being Declared to be a Legal Tender in Payments of Money; and to Prevent the Legal Tender of Such Bills as are now Subsisting, from being Prolonged Beyond the Periods Limited for Calling in and Sinking the Same.*

Whereas, great quantities of paper bills of credit have been created and issued in his Majesty's colonies or plant-

ations in America, by virtue of acts, orders, resolutions, or votes of assembly, making and declaring such bills of credit to be legal tender in payment of money; and whereas such bills of credit have greatly depreciated in their value, by means whereof debts have been discharged with a much less value than was contracted for, to the great discouragement and prejudice of the trade and commerce of his Majesty's subjects, by occasioning confusion in dealings, and lessening credit in the said colonies or plantations; for remedy whereof, may it please your most excellent Majesty, that it may be enacted; and be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of September, one thousand seven hundred and sixty-four, no act, order, resolution, or vote of assembly, in any of his Majesty's colonies or plantations in America, shall be made, for creating or issuing any paper bills, or bills of credit, of any kind or denomination whatsoever, declaring such paper bills, or bills of credit, to be legal tender in payment of any bargains, contracts, debts, dues, or demands whatsoever; and every clause or provision which shall hereafter be inserted in any act, order, resolution, or vote of assembly, contrary to this act, shall be null and void.

II. And whereas the great quantities of paper bills, or bills of credit, which are now actually in circulation and currency in several colonies or plantations in America, emitted in pursuance of acts of assembly declaring such bills a legal tender, make it highly expedient that the conditions and terms upon which such bills have been emitted, should not be varied or prolonged, so as to continue the legal tender thereof beyond the terms respect-

ively fixed by such acts for calling in and discharging such bills; be it therefore enacted by the authority aforesaid, That every act, order, resolution, or vote of assembly, in any of the said colonies or plantations, which shall be made to prolong the subsisting and current in any of the said colonies or plantations in America, beyond the times fixed for the calling in, sinking, and discharging of such paper bills, or bills of credit, shall be null and void.

III. And be it further enacted by the authority aforesaid, That if any governor or commander-in-chief for the time being, in all or any of the said colonies or plantations, shall, from and after the said first day of September, one thousand seven hundred and sixty-four, give his assent to any act or order of assembly contrary to the true intent and meaning of this act, every such governor or commander-in-chief shall, for every such offense, forfeit and pay the sum of one thousand pounds, and shall be immediately dismissed from his government, and forever after rendered incapable of any public office or place of trust.

IV. Provided always, That nothing in this act shall extend to alter or repeal an act passed in the twenty-fourth year of the reign of his late majesty King George the Second, intituled, An act to regulate and restrain paper bills of credit in his Majesty's colonies or plantations of Rhode Island and Providence plantations, Connecticut, the Massachusetts Bay, and New Hampshire, in America, and to prevent the same being legal tenders in payments of money.

V. Provided also, That nothing herein contained shall extend, or be construed to extend, to make any of the bills now subsisting in any of the said colonies a legal tender."

26 Eng. Stat., 103.

13 GEO., III., C. 57. (1773.)

"An Act, to Explain and Amend an Act, Made in the Fourth Year of His Present Majesty, Intituled, An Act to Prevent Paper Bills of Credit, Hereafter to be Issued in any of His Majesty's Colonies or Plantations in America, from being Declared to be a Legal Tender in Payments of Money, and to Prevent the Legal Tender of such Bills as are now Subsisting from being Prolonged Beyond the Periods Limited for Calling in and Sinking the Same.

Whereas, by an act, passed in the fourth year of his present Majesty's reign, (intituled, An act to prevent paper bills of credit, hereafter to be issued in any of his Majesty's colonies or plantations in America, from being declared to be a legal tender in payments of money, and to prevent the legal tender of such bills as are now subsisting from being prolonged beyond the periods limited for calling in and sinking the same), it is enacted, That from and after the first day of September, one thousand seven hundred and sixty-four, no act, order, resolution, or vote of assembly, in any of his Majesty's colonies or plantations in America, shall be made for creating or issuing any paper bills, or bills of credit, of any kind or denomination whatsoever, declaring such paper bills or bills of credit to be legal tender in payment of any bargains, contracts, debts, dues, or demands whatsoever; and that every clause and provision which should thereafter be inserted in any act, order, resolution, or vote of assembly, contrary to the said act, shall be null and void; and whereas the want of gold and silver currency in several of his Majesty's colonies and plantations in America may make it necessary as well as for the publick advantage as in justice to those persons who may have demands upon the publick treasuries in the said colonies

for services performed, that such publick creditors should be secured in the payment of their just debts and demands, by certificates, notes, bills, or debentures, to be created and issued by the authority of the general assemblies within the said colonies, on the securities of any taxes or duties given and granted to his Majesty by the said general assemblies, for and towards defraying expenses incurred for publick services; and that such certificates, notes, bills, or debentures, should be made chargeable on the publick treasurers of the said colonies, and received and taken by them as a legal tender in discharge of any such duties or taxes, or of any debts whatsoever, due to the publick treasuries of the said colonies, in virtue of laws passed in the said colonies; and whereas doubts have arisen whether, under the said recited statute, such provision as aforesaid can lawfully be made; may it therefore please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That, from and after the first day of September, one thousand seven hundred and seventy-three, any certificates, notes, bills, or debentures which shall or may be voluntarily accepted by the creditors of the publick within any of the colonies in America, as a security for the payment of what is due and owing to the said publick creditors, may be made and enacted by the several general assemblies of the said colonies respectively to be a legal tender to the publick treasurers in the said colonies for the discharge of any duties, taxes, or other debts whatsoever, due to, and payable at, or in the said public treasuries of the said colonies, in virtue of laws passed within the same, and in no other case whatsoever; anything in the aforesaid recited statute in the fourth

year of his present Majesty to the contrary thereof in anywise notwithstanding.

II. Provided always, That nothing in this act shall extend to alter or repeal an act, passed in the twenty-fourth year of the reign of his late majesty King George the Second, (intituled, An act to regulate and restrain paper bills of credit in his Majesty's colonies or plantations of Rhode Island and Providence plantations, Connecticut, the Massachusetts Bay, and New Hampshire, in America, and to prevent the same being legal tenders in payments of money)."

30 Eng. Stat., 113.

14 GEORGE III. c. 42 (1774).

This act prohibited the importation of silver coins not standard in weight and fineness, and then provided:

"That no tender in the payment made in the silver coin of this realm of any sum exceeding the sum of twenty-five pounds at any one time, shall be reputed in law, or allowed to be a legal tender within Great Britain or Ireland, for more than according to its value by weight, after the rate of five shillings and twopence for each ounce of silver; and no person to whom such tender shall be made shall be any ways bound thereby, or obliged to receive the same in payment in any other manner than as aforesaid; any law and statute or usage to the contrary notwithstanding."

30 Eng. Stat., 372, 374.

INDENTURES OF THE MINT.

The only statement showing the alterations in the weight of English coins, by the crown, in indentures of the mint, to which we have had access, is that of Sir Mathew Hale, in 1 Hal. P. C., 201.

Under the indenture of 46 Edw. III. (1373) the pound of sterling silver was coined into 300 pence or 25 shillings. This was changed by Henry V. in 1413, so that a pound of silver was coined into 360 pence, or 30 shillings. Edward IV. coined 37s 6d; Henry VIII., 40s; and Edward VI., 60s, or 720 pence from the pound troy of sterling silver.

PRE-EXISTING CONTRACTS.

There is no evidence that these alterations were allowed to affect pre-existing contracts. The reason why an increase in the number of pence, shillings and pounds, that were coined out of a pound troy of sterling silver, did not affect contracts, is probably found in the fact that at least during the period of transition the coins were tender and current by weight and not by tale. This view is advanced by *Prof. J. E. Thorold Rogers in his article on Finance in 9 Encyclopaedia Britannica, p. 178, where he makes the following interesting comments:*

"One of the financial expedients of the middle ages, and indeed of much later times, was a depreciation of the currency by means of issues which nominally of the same value with an older issue, were intrinsically below it. This is not the place in which one might point out how

disastrous and suicidal a policy it is to tamper with the currency, how mischievously the forces of government are employed when they undertake this kind of fraud, and how enduring are the calamities which result from so great a political crime. Not a little of the stability and progress of England has been due to the fact that dishonesty on the part of the government in dealing falsely with the currency has been a very rare offense, has, indeed, been committed only within a short but continuous period. The evil, however, which the action caused to England, even for so short a time, was so great that it reduced this country from the position of a first rate to that of a third rate power in Europe for more than a century.

"At the close of the thirteenth century, the pound sterling contained what its name imported, a pound weight of silver of 11.2 fineness, the penny, which was the commonest coin, containing the 240th part of a pound. Between this period and the first quarter of the sixteenth century the penny was reduced to one-third of its ancient weight. *But there is reason to believe from direct and indirect evidence that it was the practice to pay by weight and not by tale. It is inconceivable that the crown would for the sake of a temporary gain have sacrificed the fixed or quit rents, which constituted, after the beginning of the fifteenth century the greater part of the revenues raised from crown lands and regalian rights. Besides the evidence of prices is conclusive as to the alternatives that the value of silver must either have quadrupled in the fifteenth century, or that payments must have been made by weight,* for during three-fourths of the fifteenth century the prices of the necessaries of life are much lower than they are in the fourteenth. During the whole of this period, however, the coinage was kept to its customary standard of fineness, and therefore no uncertainty was induced upon pecuniary transactions.

"In 1543 Henry VIII. commenced an issue of base coin. At first the alloy was only one-sixth of the silver; but in 1545 a second issue was put into circulation, in which the alloy was one-half and in 1546 a third issue only contained one-third of silver. Henry died on January 28, 1547. The guardians of his son continued the practice during the first five years of his reign, coining money in 1547 which was only one-third fine, in 1549 of one-half fineness and in 1551 of only one-fourth fineness. An attempt was made at the conclusion of this reign to issue a coinage of genuine quality, but as the base money continued in circulation, the attempt was futile. Mary was anxious to restore the ancient standard, but found it impossible to do so. Elizabeth called in her father's and brother's base money at a low fixed rate, which gave her considerable profit and put into circulation money of the old character and quality. This was effected in 1560, so that England suffered from the evils of a base currency for seventeen years. The effect was disastrous to the highest degree, for it impoverished the nation and for a long time disabled it from filling that place in Europe which it had occupied for centuries before."

STERLING SILVER.

A pound of sterling silver since about 46th Edward III. (1373) has consisted of 11 oz. 2 dwts. pure silver and 18 dwts. alloy.

1 Hale P. C., 190.

Hale further says:

"But before that time it appears by the red book in the exchequer, (which was written before 46 E. III., and after 23 E. III.), the standard of sterling silver consisted

of eleven ounces four pennyweight of fine silver, and sixteen pennyweight of copper, so that then the standard was purer; and possibly by what follows it may appear that in the time of Henry II. the standard was purer than that; for then there was allowed only twelvepence upon the pound of silver *dealbare firmam*, which possibly might be to reduce it to fine silver, but this is obscure, *de hoc postea.*"

The 4 Hen. VII., Chap 2 (1487), mentions the government mints at London and Calais, and the mints at Canterbury, York and Durham, and among other things provides: (8) "Also all such fine silver as shall be parted and fined as is aforesaid that it be made so fine that it may bear twelve pennyweight of alloy in a pound weight and yet be as good as sterling and rather better than worse."

Sterling silver is .925 fine, but silver that only contains twelve pennyweights of alloy would be .950 fine, and silver containing sixteen pennyweights of alloy as mentioned by Hale would be .9333 fine. It thus appears that with the exception of the short period covered by the Tudor debasement the silver coinage was .925 fine or purer.

Hale's examination of the ancient accounts in the pipe rolls shows that there were two different ways of expressing money, but both were for the purpose of correctly expressing the quantity of pure silver to be paid. So much money *blanc* meant so much pure silver without any alloy. A sum of money *numero* was so much sterling money according to the standard of the times. One way of testing the money was by fire or combustion. If it was of the just alloy it was allowed, but if it was below the alloy the payer was to make it good, and hence he was said *dealbare firmam.*"

1 Hal. P. C. 205-209.

COLONY OF MASSACHUSETTS BAY.

Act of May 27, 1652.

MONEY.

"It is ordered by this court and the authority thereof, that a mint-house be erected at Boston, and that the master of the said mint and all the officers thereof shall be sworn and allowed by this court, or by such as shall be authorized by this court for that purpose.

And all persons whatsoever have liberty to bring into the said mint all bullion, plate or Spanish coyn, there to be melted and brought to alloy of sterling money by the master of the said mint and his sworn officers from time to time, by him or them to be coyned into twelvepenny sixpenny and threepenny pieces, which shall be stamped with a double ring on either side, with this inscription, Massachusetts, and a tree in the center on the one side, New England, with the year of our Lord, and the fixture XII., VI., III., according to the value of each piece, on the other side, together with a privie mark, which shall be appointed every three months by the Governour, and known only to him and the sworn officers of the mint.

And further, the master of the mint aforesaid is hereby required to coyn all the said money of good silver, of the just alloy of new sterling English money, and for value twopence in the shilling of lesser value than the present English coyn, and the lesser pieces proportionately. And all such coyn as aforesaid, (and no other except English) shall be acknowledged to be the current money of this Commonwealth, and to pass from man to man in all payments accordingly within this jurisdiction.

And the mint master, for himself and officers, for their pains and labour melting, refining and coyning is allowed

by this court to take one shilling out of every twenty shillings, which he shall stamp as aforesaid, and it shall be in the liberty of any person, who brings into the mint-house any bullion, plate or Spanish coyne, to be present and see the same melted, refined and alloyed, and then to take a receipt of the master of the mint for the weight of that which is good silver alloyed as aforesaid, for which the mint master shall deliver him the like weight in current money, viz., every shilling to weigh three pence Troy weight, and lesser pieces proportionately, deducting allowance for coynage as before is expressed.

And it is further ordered, that a committee be chosen by this court to appoint a mint house in some convenient place in Boston, and to approve and swear the master and all the officers, and to order and determine what shall further appear necessary to carry on this order to effect."

CONTINENTAL CONGRESS, MAY 23, 1776.

REPORT OF THE GOLD COMMITTEE.

(Messrs. Duane, Wythe, J. Adams, Sherman, Hewes, Johnson, Whipple, and Jefferson.)

The committee appointed on the 19th April to ascertain the value of the several species of gold and silver current in these colonies, and the proportion they and each of them bear and ought to bear to Spanish milled dollars, have taken the same into consideration, and thereupon came to the following resolutions:

"Whereas, the holders of bills of credit emitted by authority of congress will be entitled, at certain periods appointed for redemption thereof, to receive out of the treasury of the United Colonies the amount of the said bills in Spanish milled dollars, or the value thereof in gold or silver; and the value of such dollars, compared

with other silver and with gold coins, is estimated by different standards in different colonies, whereby injustice may happen in some instances to the publick as well as to individuals, which ought to be remedied; and

Whereas, the credit of the said bills, as current money, ought to be supported by the inhabitants of these colonies, for whose benefit they were issued, at the full value therein expressed, and who stand bound to redeem the same, according to the like value; and the pernicious artifices of the enemies of *American* liberty to impair the credit of the said bills, by raising the nominal value of gold and silver, ought to be guarded against and prevented; therefore,

Resolved, That the several gold and silver coins passing in the said colonies shall be received into the public treasury of the continent, and paid out in exchange for bills emitted by authority of Congress when the same shall become due, at the rates set down in the following table:

	Weight.		Value in
	dwt.	grs.	Dollars.
English guinea	5	6	4 2-3
French guinea	5	5	4 5-9
Johannes	18	0	16
Half Johannes	9	0	8
Spanish pistole	4	8	3 2-3
French pistole	4	4	3 1-2
Doubloon	..	..	..
Moidore	6	18	6
English crown	..	..	1 1-9
French crown	..	..	1 1-9
English shilling	..	..	0 2-9
Spanish milled dollar	..	..	*1

*One Dollar of Continental Money.

Resolved, That a deduction at the rate of one twenty-ninth part of a dollar per grain shall be made on all gold coins falling short of the weight specified in the aforesaid table, and an advance at the same rate shall be allowed on such as exceed the aforesaid weight.

Resolved, That all parts of the several gold coins before enumerated shall be rated in just proportion, according to the foregoing table; and that gold in bullion shall be at the rate of seventeen dollars per ounce, Troy weight, sterling alloy, and silver at one dollar and one-ninth of a dollar per ounce."

MASSACHUSETTS CONSTITUTION.

(1780.)

Chap. VI., Art. III.

"In all cases where sums of money are mentioned in this constitution the value thereof shall be computed in silver at six shillings and eight pence per ounce."

JOURNALS OF CONGRESS, AUGUST 8, 1786.

"*Resolved*, That the standard of the United States of America, for gold and silver, shall be eleven parts fine and one part alloy.

That the money unit of the United States, being by the resolve of Congress of the 6th July, 1785, a dollar, shall contain of fine silver, 375 64-100 grains.

That the money of account, to correspond with the division of coins, agreeably to the above resolve, proceed in a decimal ratio, agreeably to the forms and manner following, viz.:

Mills, the lowest unit of account, of which 1,000 shall be equal to the federal dollar, or money unit 0.001

Cents, the highest copper piece, of which 100 shall be equal to the dollar..... 0.010

Dimes, the lowest silver coin, 10 of which shall be equal to the dollar..... 0.100

Dollar, the highest silver coin..... 1.000

That betwixt the dollar and the lowest copper coin, as fixed by the resolve of Congress of the 6th July, 1785, there shall be three silver coins, and one copper coin.

That the silver coins shall be as follows: One coin, containing 187 82-100 grains of fine silver, to be called A Half-Dollar; one coin containing 75 128-1000 grains of fine silver, to be called A Double Dime; and one coin containing 37 560-1000 grains of fine silver, to be called A Dime.

That the two copper coins shall be as follows: One equal to the 100th part of the federal dollar, to be called A Cent; and one equal to the 200th part of the federal dollar to be called A Half-Cent.

That two pounds and a quarter avoirdupois weight of copper shall constitute 100 cents.

That there shall be two gold coins: One containing 246 268-1000 grains of fine gold, equal to 10 dollars, to be stamped with the impression of the American eagle, and to be called an Eagle; one containing 123 134-1000 grains of fine gold, equal to five dollars, to be stamped in like manner, and to be called an Half-Eagle.

That the mint price of a pound troy weight of uncoined silver, 11 parts fine and one part alloy, shall be 9 dollars, 9 dimes and 2 cents.

That the mint price of a pound troy weight of uncoined gold, 11 parts fine and one part alloy, shall be 209 dollars, 7 dimes and 7 cents.

MASSACHUSETTS.

Act of Oct. 17, 1786.

"AN ACT FOR ESTABLISHING A MINT FOR THE COINAGE OF GOLD, SILVER, AND COPPER.

Whereas the United States in Congress assembled, by their resolve of the eighth day of August, in the present year, *have regulated the alloy and value of coin;* and whereas the want of a sufficient circulating medium, renders it expedient, that a mint should be erected and a quantity of coin be struck; Therefore,

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That there shall be a mint erected within this Commonwealth, for the coining of gold, silver and copper; and that all the coin that shall be struck therein, shall be of the *same weight, alloy and value, and each piece bear the same name, as is by the said resolve of Congress fixed and established.*

And be it further enacted by the authority aforesaid, That there shall be a quantity of copper coin struck, equal to the amount of seventy thousand dollars, in pieces of the two different denominations mentioned in the said resolve, and in convenient proportions; one of which to have the name Cent stamped in the center thereof, and the other Half-cent, with such inscriptions or devices as the Governour, with the advice of Council, may think proper; and the said coin, when struck, shall be received in all payments in this Commonwealth.

And be it further enacted, That the Governour, with the advice of Council be, and he is hereby authorized and empowered, to appoint some suitable person or persons, to procure all the necessaries requisite to the completing of the said mint, fit for coining; and to take due care that

the same be completed as soon as may be, and also to procure an able Assay Master, Stock, Workmen and whatever may be necessary for the actual coinage of gold, silver and copper as before directed; and the Governor, with advice of Council, is hereby further empowered to appoint some suitable person or persons to have the oversight and inspection of the said mint when completed, and to see to the coinage of the copper aforementioned, and of the gold and silver that may be *bought in for stock or brought in for coining.* * * *

And be it further enacted, That all the gold, silver and copper *belonging to the Commonwealth*, that may from time to time be coined in the said mint, so often as the same shall amount to the value of one thousand dollars, shall be delivered by the said Inspector or Inspectors, into the Treasury of this Commonwealth, he or they taking duplicate receipts therefor, one of which shall be lodged in the Secretary's Office.

And be it further enacted, That the charge of erecting and completing the said mint, of stock, workmen, officers, and all other disbursements for carrying on the said business of coining, shall be defrayed out of the said coin, by warrant from the Governour, with advice of Council; the accounts relating to the said mint, and the business thereof, having been first attested by the Inspector or Inspectors, and laid before the Council, examined and approved. And if there should remain any sum or sums of money arising from the said coinage, more than is necessary for the payment of the aforesaid expenses, *the same shall be appropriated to the purchase of stock for the said mint*, unless the General Court shall otherwise order."

JOURNALS OF CONGRESS, OCTOBER 16, 1786.

Congress resumed the consideration of the ordinance for the establishment of a mint, and the same being read a third time, was passed as follows:

AN ACT FOR THE ESTABLISHMENT OF THE MINT OF THE UNITED STATES OF AMERICA, AND FOR REGULATING THE VALUE AND ALLOY OF COIN.

It is hereby ordained by the United States in Congress assembled, that a mint be established for the coinage of gold, silver and copper money, agreeably to the resolves of Congress of the 8th August last, under the directions of the following officers, viz.:

An Assay Master, whose duty it shall be to receive gold and silver in bullion, or foreign coin, to assay the same and to give his certificates for the *value thereof* at the *following rates:*

For every pound troy weight of uncoined gold or foreign gold coin, 11 parts fine and one part alloy, 209 dollars, 7 dimes, and 7 cents, money of the United States, as established by the resolve of Congress of the 8th of August last, and so in proportion to the fine gold contained in any coined or uncoined gold whatsoever.

For every pound troy of uncoined silver, or foreign silver coin, 11 parts and one part alloy, 13 dollars, 7 dimes, 7 cents and 7 mills, money of the United Sates, established as aforesaid; and so in proportion to the fine silver contained in any coined or uncoined silver whatsoever.

A Master Coiner, whose duty it shall be to receive, from time to time, of the assay-master, the bullion necessary for coinage; to report to Congress devices and proofs of the proposed pieces of coin, and to procure proper workmen to execute the business of coinage, reporting, from

time to time, to the Commissioners of the Board of Treasury of the United States for approbation and allowance, the occupation, number and pay of the persons so employed.

A Pay-Master, who shall be the treasurer of the United States for the time being, whose duty it shall be to receive and take charge of the coin made under the direction of the master coiner, and to receipt for the same; to receive and duly enter the certificates for uncoined gold or silver issued by the assay-master, and to pay 95-100 of the amount thereof in gold or silver, and 5-100 in the copper coin of the United States.

And it is hereby further ordained, That the certificates to be given to the assay-master, to persons who shall lodge gold or silver in the mint for coinage, shall be on fine blank paper, and expressed in the manner and form following, to-wit:

MINT OF THE UNITED STATES.

I acknowledge to have received of A. B. for coinage (here insert the weight), of (insert the species) bullion, for the amount of which pay to ..... or bearer, the sum of ..... at ten days' sight, agreeably to the custom of the mint.

C. D., Assay-Master.

To E. F., Pay-Master of the Mint of the United States of America.

And it is hereby further ordained, That the officers above mentioned, shall settle their accounts monthly, agreeably to such forms and vouchers as shall be prescribed by the controller of the treasury.

And it is hereby further ordained, That the officers shall enter into bonds to the United States in Congress assembled, for the faithful execution of the trust respectively

reposed in them, in the manner and amount following, viz.:

The Assay-Master, in the sum of 10,000 dollars, and two sureties, each in the sum of 5,000 dollars.

The Master Coiner, in the sum of 10,000 dollars, and two sureties, each in the sum of 5,000 dollars.

And that the officers mentioned in this ordinance, as well as every other person employed in the mint, shall take and subscribe the oath of office, established by the resolve of the 14th March, 1786.

And it is hereby further ordained, That it shall be the duty of the controller of the treasury to report monthly to the commissioners of the treasury of the United States, a statement of the mint accounts adjusted agreeably to the usual forms; and if on such statement or other information it shall appear, that there has been any neglect, mismanagement or abuse of trust, in any of the officers mentioned in the within ordinance, it shall be the duty of the commissioners of the board of treasury to suspend such officer or officers, and to report thereon especially to Congress.

And it is hereby further ordained, That the copper coin struck under the authority of the United States in Congress assembled, shall be receivable in all taxes, or payments due to the United States, in the proportion of 5 dollars for every hundred dollars so paid; but that no other copper coin whatsoever, shall be receivable in any taxes or payments whatsoever to the United States.

And whereas, The great quantities of base copper coin daily imported into, or manufactured within the several States, is become so highly injurious to the interest and commerce of the same, as to require the immediate interposition of the powers vested by the confederation in the

United States in Congress assembled, of *regulating the value of copper, the coin so current as aforesaid;*

It is hereby ordained, That no foreign copper coin whatsoever, shall, after the first day of September, 1787, be current within the United States of America: And that no copper coin struck under the authority of a particular State, shall pass at a greater value than one federal dollar for two pounds and one-quarter of a pound, avoirdupois weight, of such copper coin. Done, &c."

MADISON IN THE FEDERALIST.

Discussing the provision of the Constitution prohibiting the States from coining money, or emitting bills of credit, Madison said:

"The extension of the prohibition to bills of credit must give pleasure to every citizen in proportion to his love of justice and his knowledge of the true springs of public prosperity. The loss which America has sustained since the peace, from the pestilential effects of paper money on the necessary confidence between men; on the necessary confidence in the public councils; on the industry and morals of the people and on the character of republican government, constitutes an enormous debt against the states chargeable with this unadvised measure which must long remain unsatisfied; or rather an accumulation of guilt, which can be expiated, no otherwise than by a voluntary sacrifice on the altar of justice, of the power which has been the instrument of it. In addition to these persuasive considerations it may be observed that the same reasons which show the necessity of denying to the states the power of regulating coin prove with equal force that they ought not to be at liberty to substitute a paper

medium, in the place of coin. *Had every state a right to regulate the value of its coin, there might be as many different currencies as states;* and then the intercourse among them would be impeded; *retrospective alterations in its value might be made,* and the citizens of other states be injured and animosities be kindled among the states themselves. The subjects of foreign powers might suffer from the same cause, and hence the union be discredited and embroiled by the indiscretion of a single member. No one of these mischiefs is less incident to a power to emit paper money than to coin gold and silver. The power to make anything but gold and silver a tender in payment of debts, is withdrawn from the states, on the same principle with that of issuing a paper currency."

HAMILTON IN HIS MINT REPORT.

QUOTATIONS FROM HAMILTON'S REPORT TO CONGRESS ON SUBJECT OF THE ESTABLISHMENT OF THE MINT, 1791.

"In this state of things there is some difficulty in defining the dollar which is to be understood as constituting the present money unit on the supposition of its being most applicable to that species of coin. The old Seville piece of 386 grains and 15 mites fine comports best with the computations of foreign exchanges, and with the more ancient contracts respecting landed property; but far the greater number of contracts still in operation concerning that kind of property, and all those of a merely personal nature now in force must be referred to a dollar of a different kind. The *actual dollar, at the time of contracting, is the only one which can be supposed to have been intended;* and it has been seen that as long ago as the year 1761 there had been a material degradation of the standard. And even in regard to the more ancient contracts, no person has ever had any idea of a scruple about receiving the

dollar of the day as a full equivalent for the nominal sum which the dollar originally imported.

A recurrence, therefore, to the ancient dollar would be, in the greatest number of cases, an innovation in fact, and in all an innovation in respect to opinion. The actual dollar in common circulation has evidently a much better claim to be regarded as the actual money unit.

The mean intrinsic value of the different kinds of known dollars has been intimated as affording the proper criterion. But when it is recollected that the more ancient and more valuable ones are not now to be met with at all in circulation, and that the mass of those generally current is composed of the newest and most inferior kinds, it will be perceived that even an equation of that nature would be a considerable innovation upon the real present state of things; which it will certainly be prudent to approach, as far as may be consistent with the permanent order designed to be introduced.

An additional reason for considering the prevailing dollar as the standard of the present money unit rather than the ancient one, is, that it will not only be conformable to the true existing proportion between the two metals in this country, but will be more conformable to that which obtain in the commercial world generally.

* * * * * * *

But this does not coincide with the real difference between the metals in our market, or which is the same thing, in our currency. To determine this, the quantity of fine silver in the general mass of the dollars now in circulation must afford the rule. Taking the rate of the late dollar of 374 grains, the proportion would be as 1 to 15.11. Taking the rate of the newest dollar, the proportion would be as one to 14.87. The mean of the two would give the proportion of 1 to 15 very nearly; less than the legal proportion in the coins of Great Britain, which is as

1 to 15.2; but somewhat more than the actual or market proportion, which is not quite 1 to 15.

The preceding view of the subject does not, indeed, afford a precise or certain definition of the present unit in the coins, but it furnishes data which will serve as guides in the progress of the investigation. It ascertains, at least, that the sum in the money account of each state, corresponding with the nominal value of the dollar in each state, corresponds also with 24 grains and six-eighths of a grain of fine gold; and with something between 368 and 374 grains of fine silver.

* * * * * * *

Upon the supposition that the expense of coinage ought to be defrayed out of the metals, there are two ways in which it may be effected: one by a reduction of the quantity of fine gold and silver in the coins, the other by establishing a difference between the value of those metals in the coins and the mint price of them in bullion.

The first method appears to the Secretary inadmissible. He is unable to distinguish an operation of this sort from that of raising the denomination of the coin—a measure which has been disapproved by the wisest men of the nations in which it has been practiced, and condemned by the rest of the world. To declare that a less weight of gold or silver shall pass for the same sum, which before represented a greater weight, or to ordain that the same weight shall pass for a greater sum are things substantially of one nature. The consequence of either of them, if the change can be realized, is to degrade the money unit; obliging creditors to receive less than their just dues, and depreciating property of every kind. For it is manifest that every thing would, in this case, be represented by a less quantity of gold and silver than before.

It is sometimes observed on this head that, though any

article of property might, in fact, be represented by a less actual quantity of pure metal, it would nevertheless be represented by something of the same intrinsic value. Every fabric, it is remarked, is worth intrinsically the price of the raw material and the expense of fabrication; a truth not less applicable to a piece of coin than to a yard of cloth.

This position, well founded in itself, is here misapplied. It supposes that the coins now in circulation are to be considered as bullion, or, in other words, as raw material. But the fact is, that the adoption of them as money has caused them to become the fabric; it has invested them with the character and office of coins, and has given them a sanction and efficacy equivalent to that of the stamp of the sovereign. The prices of all our commodities, at home and abroad, and of all foreign commodities in our markets, have found their level in conformity to this principle. The foreign coins may be divested of the privilege they have hitherto been permitted to enjoy, and may of course be left to find their value in the market as a raw material. But the quantity of gold and silver in the national coins, corresponding with a given sum, cannot be made less than heretofore without disturbing the balance of intrinsic value, and making every acre of land, as well as every bushel of wheat, of less actual worth than in time past.

* * * * * * *

It is, however, not improbable that the effect meditated would be defeated by a rise of prices proportioned to the diminution of the intrinsic value of the coins. This might be looked for in every enlightened commercial country; but, perhaps, in none with greater certainty than in this; because in none are men less liable to be the dupes of

sounds; in none has authority so little resource for substituting names for things.

* * * * * * *

Under the impression that a *small* difference between the value of the coin and the mint price bullion, is the least exceptionable expedient for restraining the melting down, or exportation of the former, and not perceiving that, if it be a very moderate one, it can be hurtful in other respects, the Secretary is inclined to an experiment of one-half per cent on each of the metals. The fact which has been mentioned, with regard to the price of gold bullion in the English market, seems to demonstrate that such a difference may safely be made. In this case, there must be immediate payment for the gold and silver offered to the mint. How far one-half per cent will go towards defraying the expense of the coinage, cannot be determined beforehand with accuracy. It is presumed that, on an economical plan, it will suffice in relation to gold. But it is not expected that the same rate on silver will be sufficient to defray the expense attending that metal. Some additional provision may, therefore, be found necessary, if this limit be adopted.

It does not seem to be advisable to make any greater difference in regard to silver than to gold; because it is *desirable that the proportion between the two metals in the market, should correspond with that in the coins*, which would not be the case if the mint price of one was comparatively lower than that of the other; and because, also, silver being proposed to be rated in respect to gold, somewhat below its general commercial value, if there should be a disparity to its advantage in the mint prices of the two metals, it would obstruct too much the bringing of it to be coined, and would add an inducement to export it. *Nor does it appear to the Secretary safe to make a greater dif-*

ference between the value of coin and bullion, than has been mentioned. It will be better to have to increase it, hereafter, if this shall be found expedient, than to have to recede from too considerable a difference, in consequence of evils which shall have been experienced.

There is scarcely any point, in the economy of national affairs, of greater moment than the uniform preservation of the intrinsic value of the money unit. On this the scrutiny and steady value of property essentially depend.

* * * * * * *

It is now proper to resume and finish the answer to the first question, in order to which the three succeeding ones have necessarily been anticipated. The conclusion to be drawn from the observations which have been made on the subject is this: that the unit in the coins of the United States ought to correspond with 24 grains and three-fourths of a grain of pure gold, and with 371 grains and one-fourth of a grain of pure silver, each answering to a dollar in the money of account. The former is exactly agreeable to the present value of gold, and the latter is within a small fraction of the mean of the two last emissions of dollars; the only ones which are now found in common circulation, and of which the newest is in the greatest abundance. The alloy in each case to be one-twelfth of the total weight, which will make the unit 27 grains of standard gold, and 405 grains of standard silver.

* * * * * * *

That species of coin (silver) has never had any settled or standard value, according to weight or fineness, but has been permitted to circulate by tale, without regard to either, very much as a mere money of convenience, while gold has had a fixed price by weight, and with an eye to its fineness. This greater stability of value of the gold coins is an argument of force for regarding the

money unit as having been hitherto virtually attached to gold rather than to silver.

Twenty-four grains and six-eighths of a grain of fine gold have corresponded with the nominal value of the (silver) dollar in the several States, without regard to the successive diminutions of the intrinsic worth.

But if the (silver) dollar should, notwithstanding, be supposed to have the best title to being considered as the present unit in the coins, it would remain to determine what kind of dollar ought to be understood; or, in other words, what precise quantity of fine silver.

* * * * * * *

"The sum in the money of account of each State, corresponding with the nominal value of the dollar in such State, corresponds also with 24 grains and 6-8 of a grain, of fine gold; and with something between 368 and 374 grains of fine silver."

* * * * * * *

"There can hardly be a better rule in any country, for the legal, than the market proportion, if this can be supposed to have been produced by the free and steady course of commercial principles. The presumption, in such case, is, that each metal finds its true level, according to its intrinsic utility, in the general system of money operations."

JEFFERSON ON HAMILTON'S REPORT.

When Hamilton had prepared his report with his recommendations to Congress, he submitted the same to Jefferson, who had previously expressed his own views in some memoranda submitted to the Continental Congress. After reading Hamilton's report, he returned it with the following letter:

"Dear Sir—I return you the Report on the Mint, which I have read with great satisfaction. I concur with you in thinking that the unit must stand on both metals; that the alloy should be the same in both; also, in the proportion you establish between the value of the two metals. As to the question on whom the expense of coinage is to fall, I have been so little able to make up an opinion satisfactory to myself, as to be ready to concur in either decision. With respect to the dollar, it must be admitted by all the world, that there is great uncertainty in the meaning of the term; and therefore all the world would have justified Congress for their first act of removing the uncertainty, by declaring, what they understood by the term; but the uncertainty once removed, exists no longer; and *I very much doubt a right now to change the value, and especially to lessen it. It would lead to so easy a mode of paying off their debts; besides, the parties injured by this reduction of the value would have so much matter to urge in support of the first point of fixation.*

Should it be thought, however, that Congress may reduce the value of the dollar, I should then be for adopting for our unit, instead of the dollar, either one ounce of pure silver, or one ounce of standard silver, so as to keep the unit of money a part of the system of measures, weights and coins. I hazard these thoughts to you, extempore, and am, dear sir, respectfully and affectionately. I enclose two letters just received from France."

Jefferson here refers to the act of the Continental Congress of August 8, 1786, fixing the value of the dollar at 375.64 grains fine silver, and he even doubts the power of the Federal Congress to reduce that to 371¼ grains.

ROBERT MORRIS TO CONGRESS.

QUOTATIONS FROM COMMUNICATION OF ROBERT MORRIS TO CONGRESS ON THE SUBJECT OF ESTABLISHMENT OF A MINT, JANUARY, 1792.

"It is, therefore, to be lamented that we have so many different coins in the United States. It is not necessary to mention what is in everybody's mouth, that the precious metals were first used as bullion; and that the inconvenience of weighing, and the difficulty of assaying, introduced the practice of coining, in order that the weight and fineness might be known at the first view, and of consequence the value be instantly ascertained. It is equally unnecessary to observe, that the great privilege of declaring this value by particular marks, has, among all nations, been vested, exclusively, in the sovereign. A trust so important could not, indeed, be vested anywhere else, because the danger of abusing it was too great. And history informs us that sovereigns themselves have not, on this occasion, behaved with that integrity which was alike due to their subjects, and to themselves, to the interests of their people, and to their own personal glory. Experience has already told us that the advantage of gold as a coin is, in this country, very considerably diminished; for every distinct piece must be weighed before it can be safely received. Both gold and silver coins are, indeed, preferable, in one respect, to common bullion,—that the standard is presumed to be just, and consequently they are received without the delays and expenses of assaying. It must, however, be remembered, that they are all foreign coins, and of course we are not only exposed to the tricks of individuals, but should it suit the interest or convenience of any sover-

eign to make base money for us, there is nothing to prevent it.

* * * * * * *

The various coins which have circulated in America have undergone different changes in their value, so that there is hardly any which can be considered as a general standard, unless it be Spanish dollars. These pass in Georgia at five shillings; in North Carolina and New York at eight shillings; in Virginia and the four Eastern States at six shillings; in all other States, except South Carolina, at seven shillings and sixpence; and in South Carolina at thirty-two shillings and sixpence. The money unit of a new coin, to agree, without a fraction, with all these different values of a dollar, except the last, will be the fourteen hundred and fortieth part of a dollar, equal to the sixteen hundredth part of a crown; of these units, twenty-four will be a penny of Georgia; fifteen will be a penny of North Carolina or New York; twenty will be a penny of Virginia and the four Eastern States; sixteen will be a penny of all the other States, except South Carolina; and forty-eight will be thirteen pence of South Carolina.

* * * * * * *

In the present moment, it is by no means of such consequence to establish the relative value of different coins, as to provide a standard of our own, by which, in future, to estimate them. If the value were now sought, they must all be estimated in dollars, because dollars are called for in the several requisitions of Congress. Without noticing the preference thus given to one foreign coin over another, it is suffiicent to observe that, if greater alloy should be introduced by the Spanish government into their dollars, our interior regulations as to money would be overturned; and certainly we have no security that this will not happen."

JEFFERSON'S NOTES ON COINAGE.

QUOTATIONS FROM NOTES ON THE ESTABLISHMENT OF A MONEY MINT, AND OF A COINAGE FOR THE UNITED STATES.—By T. JEFFERSON.

"If we determine that a dollar shall be our unit, *we must then say, with precision, what a dollar is.* This coin, as struck at different times, of different *weights* and *fineness,* is of different *values.* Sir Isaac Newton's assay and representation to the lords of the treasury, in 1717, of those which he examined, made their value as follows, viz.:

	Dwts.	Grs.	Grains of Pure Silver.
The Seville piece of eight.....	17	12	containing 387
The Mexico do.	17	10 5-9ths	385½
The Pillar do.	19	9	385¾
The New Seville do.	14		308⅞

The financier states the old dollars as containing 376 grains of fine silver, and the new 365 grains. If the dollars circulating among us be of every date equal, we should examine the quantity of pure metal in each, and from them form an average for our unit. This is a work proper to be committed to the mathematicians as well as merchants, and which should be decided on actual and accurate experiments.

* * * * * * *

The proportion between the value of gold and silver is a mercantile problem altogether. It would be inaccurate to fix it by the popular exchanges of a half joe for 8 dollars, a louis for 4 French crowns, or 5 louis for 23 dollars. The first of these would be to adopt the Spanish propor-

tion between gold and silver; the second, the French; the third, a more popular barter, wherein convenience is consulted more than accuracy. The legal proportion on Spain is 16 for 1; in England, 15 1-5 for 1; in France, 15 for 1. The Spaniards and English are found in experience to retain an over-proportion of gold coins, and to lose their silver. The French have a greater proportion of silver. The difference at market has been on the decrease. The financier states it at present as at 14½ for 1. Just principles will lead us to disregard legal proportions altogether; to inquire into the market price of gold in the several countries with which we shall principally be connected in commerce, and to take an average from them. Perhaps we might, with safety, lean to a proportion somewhat above par for gold, considering our neighborhood and commerce with the sources of the coins, and the tendency which the high prices of gold in Spain has to draw thither all that of their mines, leaving silver principally for our and other markets. It is not impossible that 15 for 1 may be found an eligible proportion. I state it, however as conjectural only.

* * * * * * *

That this subject may be property prepared, and in readiness for Congress to take up at their meeting in November, something must now be done. The present session drawing to a close, they probably would not choose to enter far into this undertaking. The committee of the States, however, during the recess, will have time to digest it thoroughly, if Congress will fix some general principles for their government. Suppose, then, they be instructed.

To appoint proper persons to assay and examine, with the utmost accuracy practicable, the Spanish milled dollars of different dates, in circulation with us.

To assay and examine, in like manner, the fineness of all the other coins which may be found in circulation within these States.

To report to the committee the result of these assays, by them to be laid before Congress.

To appoint also proper persons to inquire what are the proportions between the values of fine gold and fine silver, at the markets of the several countries with which we are, or may probably be, connected in commerce; and what would be a proper proportion here, having regard to the average of their values at those markets, and to other circumstances, and report the same to the committee, by them to be laid before Congress.

To prepare an ordinance for establishing the unit of money within these States, for subdividing it, and for striking coins of gold, silver and copper, on the following principles:

That the money unit of these States shall be equal in value to a Spanish milled dollar, containing so much fine silver as the assay, before directed, shall show to be contained, on an average in dollars of the several dates in circulation with us;

That this unit shall be divided into 10ths and 100ths;

That there shall be a coin of silver, of the value of an unit; one other of the value of one-tenth of an unit; one other of copper of the value of the 100th of an unit;

That there shall be a coin of gold, of the value of 10 units, according to the report before directed, and the judgment of the committee thereon;

That the alloy of the said coins, of gold and silver, shall be equal in weight to one-eleventh part of the fine metal;

That there be proper devices for these coins;

That measures be proposed for preventing their diminution, and also their currency, and that of any others, when diminished;

That the several foreign coins be described and classed in the said ordinance, the fineness of each class stated, and its value by weight estimated in units, and decimal parts of units, and that said draught of an ordinance be reported to Congress at their next meeting, for their consideration and determination."

NEW HAMPSHIRE CONSTITUTION.

The constitution of 1784 and that of 1792 contain this provision:

"In all cases where sums of money are mentioned in this constitution the value thereof shall be computed in silver at six shillings and eight pence per ounce."

Evidently the "value" of a coin as understood by the people of New Hampshire was the same after the adoption of the constitution of the United States as before.

Every fair-minded man who makes himself familiar with the English and American documentary evidence brought together in the foregoing pages of this brief will be willing to admit that at the time the Constitution of the United States was adopted, and for many centuries before, the "value" of a piece of coined money, as understood by the people who spoke the English language, depended entirely upon the amount of pure metal contained in it. There is no evidence anywhere that the Crown or the Parliament, in England, or the Colonial Governor or the Assembly, in any American colony, had ever succeeded in disregarding this natural law of value.

Perhaps the best single item of evidence has been omitted. It is found in the coinage provisions of the

ARTICLES OF CONFEDERATION.

(1777.)

"The United States in Congress assembled shall also have the sole and exclusive right and power of regulating *the alloy and value* of coin struck by their own authority or by that of the respective States.

"The United States in Congress assembled shall never engage in war * * * nor *coin money, nor regulate the value thereof,* * * * unless by the votes of a majority of the United States in Congress assembled."

The articles of confederation were the result of the first attempts to establish a form of government for the United States. They make use of the exact words of the Constitution of the United States, subsequently adopted, viz.: to "coin money" and "regulate the value thereof." But

in this very connection we have conclusive proof furnished by the same organic instrument that the "value" of a coin, and the pure metal contained in it, are synonymous terms. The power granted to the United States "of regulating the alloy and value of coin," shows that the word "value" was used to express the amount of pure gold or silver, the different coins were to contain, as distinguished from the alloy therein.

II.

For the following reasons the Legal Tender cases, 12 Wall., 457, and Juillard vs. Greenman, 110 U. S., 444, are not authoritative or binding on the question whether Congress has power by alterations in the weight or fineness of the coin to impair contracts:

(1) The question was not before the Court in either case, and the opinion expressed was in each instance a mere obiter dictum.

(2) The practical construction of the Constitution by Congress by the Act of June 28, 1834, reducing the pure gold in the gold dollar was misunderstood by the Court. The facts were just the reverse of those stated by the Court. Instead of showing that Congress impaired contracts, and asserted and exercised the power to do so, the facts show that Congress took the utmost care not to change or alter contracts, and succeeded in giving the Constitution a practical construction in plain conflict with the interpretation adopted by the Court.

(3) The main, and avowed, object and purpose of the decision actually made in the Legal Tender cases, 12 Wall., 457, was to avoid disturbing the immense volume of contracts that had been contracted on a depreciated paper money basis. It was an attempt to so apply the doctrine of the inviolability of contracts as to prevent an injustice that a violaion of that doctrine had made possible.

(4) The practical construction given to the Constitution during the civil war by the Nation itself, was the real reason or ground of the decision of the Court in Juillard vs. Greenman. 110 U. S., 444, and the reasons set forth in the opinion

were advanced to meet the legal theory that the Constitution never changes and is absolutely rigid.

Before passing to the consideration of these different reasons, we will here insert the *obiter dicta* of which we complain, together with Justice Field's criticism of the same, in his dissenting opinion.

In the *Legal Tender cases, 12 Wall., 457*, Mr. Justice Strong, in delivering the opinion of the court, among other things, said:

"By the Act of June 28, 1834, a new regulation of the weight and value of gold coin was adopted, and about six per cent was taken from the weight of each dollar. The effect of this was that all creditors were subjected to a corresponding loss. The debts then due became solvable with six per cent less gold than was required to pay them before. The result was thus precisely what it is contended the Legal Tender Acts worked. But was it ever imagined this was taking private property without compensation or without due process of law? Was the idea ever advanced that the new regulation of gold coin was against the spirit of the Fifth Amendment? And has any one, in good faith, avowed his belief that even a law debasing the current coin by increasing the alloy would be taking private property? It would be impolitic and unjust, but could its constitutionality be doubted? Other statutes have from time to time reduced the quantity of silver in silver coin without any question of their constitutionality. It is said, however, now, that the Act of 1834 only brought the legal value of gold more nearly into correspondence with its actual value in the market, or its relative value to silver. But we do not perceive that this varies the case or diminishes its force as an illustration. The creditor who had a thousand dollars due him on the 31st day of July, 1834 (the day before the Act

took effect), was entitled to a thousand dollars of coined gold of the weight and fineness of the then existing coinage. The day after, he was entitled only to a sum six per cent less in weight and in market value, *or to a smaller number of silver dollars.* Yet he would have been a bold man who had asserted that because of this the obligation of the contract was impaired, or that private property was taken without compensation or without due process of law. No such assertion, so far as we know, was ever made. Admit it was a hardship, but it is not every hardship that is unjust, much less that is unconstitutional; and certainly it would be an anomaly for us to hold an act of Congress invalid merely because we might think its provisions harsh and unjust."

The statement in italics shows that the learned judge wholly failed to understand the act of June 28, 1834, for that act did not reduce the number of silver dollars a creditor was entitled to receive under a prior contract. The silver dollar was the actual standard of value and of payment, and the act of June 28, 1834, merely brought the gold dollar down to the actual standard. It did not impair contracts at all, for the simple reason that it made no change whatever in the silver dollar, and did not reduce the number of silver dollars a creditor was entitled to receive on a contract.

In *Juillard vs. Greenman, 110 U. S., 444,* Mr. Justice Gray, in delivering the opinion of the Court, said:

"So, under the power to coin money and to regulate its value, Congress may, as it did with regard to gold by the act of June 28, 1834, ch. 95, and with regard to silver by the act of February 28, 1878, ch. 20, issue coins of the same denominations as those already current by law, but of less intrinsic value than those, by reason of containing less weight of the precious metals, and thereby enable debtors to discharge their debts *by the payment of coins of*

the less real value. A contract to pay a certain sum of money, without any stipulation as to the kind of money in which it shall be paid, may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made."

Here we have the very same error of fact, the same mistake, that first appeared in the previous opinion by Justice Strong, and it is possibly true that it was adopted from that opinion by Justice Gray without any particular consideration or examination by him; and certainly without that able, careful and exhaustive study and investigation the judicial record of this great jurist shows he could have brought to bear upon the question.

Mr. Justice Field, in his dissenting opinion in *Jaillard vs. Greenman, 110 U. S., 457*, said:

"The meaning of the term 'to coin money' is not at all doubtful. It is to mould metallic substances into forms convenient for circulation and to stamp them with the impress of the government authority indicating their value with reference to the unit of value."

Criticising the opinion of Mr. Justice Gray, Mr. Justice Field said:

"The opinion not only declares that it is in the power of Congress to make the notes of the government a legal tender and a standard of value, but that, under the power to coin money and regulate the value thereof, Congress may issue coins of the same denominations as those now already current, but of less intrinsic value, by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by the payment of coins of less real value. This doctrine is put forth as in some way a justification of the legislation authorizing the tender of nominal money in place of real money in payment of debts. Undoubtedly Congress has power to alter the value of coins issued, either by increas-

ing or diminishing the alloy they contain; so it may alter, at its pleasure, their denominations; it may hereafter call a dollar an eagle; it may call an eagle a dollar. But if it is intended to assert that Congress can make the coins changed, the equivalent of those having a greater value in their previous condition, and compel parties contracting for the latter to receive coins with diminished value, I must be permitted to deny any such authority. Any such declaration on its part would be not only utterly inoperative in fact, but a shameful disregard of its constitutional duty. As I said on a former occasion: 'The power to coin money, as declared by this Court, is a great trust devolved upon Congress, carrying with it the duty of creating and maintaining a uniform standard of value throughout the Union, and it would be a manifest abuse of this trust to give to the coins issued by its authority any other than their real value.' By debasing the coins, when once the standard is fixed, is meant giving to the coins, by their form and impress, a certificate of their having a relation to that standard different from that which, in truth, they possess; in other words, giving to the coins a false certificate of their value. Arbitrary and profligate governments have often resorted to this miserable scheme of robbery, which Mill designates as a shallow and impudent artifice, the 'least covert of all modes of knavery, which consists in calling a shilling a pound, that a debt of one hundred pounds may be cancelled by the payment of one hundred shillings.' No such debasement has ever been attempted in this country, and none will ever be so long as any sentiment of honor influences the governing power of the nation. The changes from time to time in the quantity of alloy in the different coins has been made to preserve the proper relative value between gold and silver, or to prevent exportation, and not with a view of debasing them. Whatever power may be vested

in the government of the United States, it has none to perpetrate such monstrous iniquity. One of the great purposes of its creation, as expressed in the preamble of the Constitution, was the establishment of justice, and not a line nor a word is found in that instrument which sanctions any intentional wrong to the citizen, either in war or in peace."

FIRST.

What is an obiter dictum?

An *obiter dictum* is a careless expression of opinion by a judge on one question when his mind is directed towards and he is engaged in the consideration of another question.

An *obiter dictum* may prove to be good law or bad law; but not being expressed authoritatively it has no binding force on anyone; not even on the judge who uttered it.

An *obiter dictum* found to be erroneous is rejected and disregarded in subsequent decisions.

Sometimes a bad *obiter dictum* is accepted in later decisions by judges who fail to discover its error, and in that way it passes into the law and becomes authoritative.

We cannot better illustrate this subject than by referring to two cases of *obiter dictum* in the Michigan Reports.

Creswell vs. The People, 13 Mich., 427, was a case involving the question whether criminal connection with a woman who was *non compos mentis* would make the offender guilty of rape. In deciding that question the Court in an opinion by Cooley, J., referred to some of the cases where it was held that in rape fraud could not take the place of force, and then made this statement:

"But there are some cases in this country to the contrary, and they seem to us to stand upon much the better

reasons, and to be more in accordance with the general rules of criminal law. *People vs. Metcalf, 1 Whart., C. C., 378, and note 381; State vs. Shepard, 7 Conn., 54.* And in England, where a medical practitioner had knowledge of the person of a weak-minded patient on pretense of medical treatment, the offense was held to be rape. *Regina vs. Stanton, 1 C. & K., 415; same case, 1 Den. C. C.*"

The correctness of this ruling was challenged by counsel in the subsequent case of *Don Moran vs. The People, 25 Mich., 356,* on the ground that it was not sustained by the authorities cited. The Court found that counsel were correct. (See opinion of Court as delivered by Christiancy, J., at pp. 360, 361). And at p. 364 the Court makes this instructive comment:

"The only question really involved in People vs. Creswell, above cited, was whether, under the circumstances of that case, the defendant could be held guilty without proof of force of any form, actual or threatened, and it was, I think, properly held by us that he could not. But after disposing of this, the only question in the case, an intimation was thrown out—for which I admit and claim a full share of the responsibility—that when a woman's consent is obtained by fraud, she at the time supposing the man to be her husband, the connection thus obtained may constitute rape. No such question was involved or argued; and we suppose it to be well understood by judges and the profession, that intimations and suggestions of this kind, in no way necessary to the decision of the case, are not always, or generally, as carefully considered and examined as the questions upon which the case itself turns; and hence the familiar rule that judicial opinions are to be considered as authority, and construed, only *secundum subjectam materiam.*"

In the case of *Swart vs. Kimball, 43 Mich., 443,* the Court held a statute unconstitutional which authorized the pros-

ecution of a trespasser on the lands of the state in a county other than the county in which the offense was committed. In disposing of the case the Court, in an opinion by Cooley, J., gave expression to the following *obiter dictum.*

"It has been doubted in some states whether it was competent even to permit a change of venue on the application of the state to escape local passion, prejudice and interest. *Kirk vs. State, 1 Cold., 344; Osborn vs. State, 24 Ark., 629; Wheeler vs. State, 24 Wis., 52;* but this may be pressing the principle too far. *State vs. Robinson, 14 Minn., 447; Gut vs. State, 9 Wall., 35.*"

Here we have a general looseness of expression that is quite remarkable. The cases cited to show that it had been "doubted" in some states whether the venue could be changed in a criminal case without the consent of the accused, are direct and positive adjudications that it cannot be done; and there is no suggestion of a doubt on the subject. The words "but this may be pressing the principle too far," merely express a doubt and a very weak one at that. And when the cases cited to sustain this doubt are examined we find that they have no bearing on the question. *State vs. Robinson* relates to the venue in a case where the crime was alleged to have been committed within one hundred rods of the line between two counties, and the statute permitted a prosecution in either county for the very good reason that they would both include the neighborhood of the crime. *Gut vs. State* was a case involving the venue in a county to which unorganized counties were attached for judicial purposes, and the statute permitting the trial to take place in the unorganized territory was held not to be an *ex post facto* law. The case arose before the fourteenth amendment, and the question whether the statute was due process of law was not in the case.

Yet, notwithstanding all this, the Supreme Court of Michigan, in *People vs. Peterson, 93 Mich., 27*, where the trial court did change the venue without the consent of the accused and after two juries had disagreed, seized with avidity upon the words of Judge Cooley, "but this may be pressing the principle too far," and an *obiter dictum* consisting of the shadow of a doubt became adjudicated law.

It is true the Court did not wholly rely upon the shadow but sought to sustain the conclusion reached on other grounds. The learned judge who wrote the opinion distinguished the Wisconsin case from the one before the Court on the theory that the people of Wisconsin had been more careful than the people of Michigan in framing their constitution. The Wisconsin constitution reads:

"A trial by an impartial jury of the county or district wherein the offense shall have been committed, which county or district shall have been previously ascertained by law."

The Michigan constitution reads:

"The right of trial by jury shall remain," etc.

"In every criminal prosecution the accused shall have the right to a speedy and public trial by an impartial jury which may consist of less than twelve men in all courts not of record."

In making the distinction he did, the learned judge overlooked the strongest and most authoritative part of the opinion in *Swart vs. Kimball*, viz., that relating the vicinage, at pp. 448-449.

"Now that in jury trial it is implied that the trial shall be by a jury of the vicinage is familiar law. Blackstone says the jurors must be "of the visne or neighborhood; which is interpreted to be of the county where the fact is committed." 4 Com., 350. This is an old rule of the common law; Hawk. P. C. b. 2, c. 40; 2 Hal. P. C., 264;

and the rule was so strict and imperative that if an offense was committed partly in one county and partly in another, the offender was not punishable at all. Hawk. P. C. b. 2, c. 25; 1 Chit. Cr. L. 177. This over nicety was long since dispensed with, but the old rule has in the main been preserved in its integrity to this day."

The learned judge did find some support for his position in New York in the cases of *People vs. Webb, 1 Hill, 179,* and *People vs. Baker, 3 Parker Crim. R., 181.* But both of those cases were based upon an erroneous view of the common law and of the power of the King's Bench on certiorari to change the venue in a criminal case. As pointed out by Judge Cooley in Swart vs. Kimball, p. 449, the exercise of that power was one of the usurpations which led to the American revolution and the practice has no place or standing under the written constitutions of America.

The New York cases referred to *King vs. Nottingham, 4 East, 208,* where there was a change of venue under the statute of June 1, 1798, relative to indictments and trials "within the counties of certain cities and towns corporate," and the preamble to which statute recites the common law rule on changes of venue as follows:

"Whereas, There at present exists in the counties of cities and of towns corporate within this kingdom, an exclusive right that all causes and offenses which arise within their particular limits should be tried by a jury of persons residing within the limits of the county of such city or town corporate; which ancient privilege, intended for other and good purposes, has in many instances been found by experience not to conduce to the ends of justice; and whereas it will tend to the more effectual administration of justice in certain cases, if actions, indictments, and other proceedings the causes of which arise within the counties of cities and towns cor-

porate were tried in the next adjoining counties; in order, etc."

38 Geo. III., c. 52.

The counties of cities and town corporate referred to in this preamble are those counties in England where there is a county within a county, and in many of which the city or town is the assize town of the outer or greater country. These counties are mentioned in the later end of the preamble as "the next adjoining counties." The statute therefore is not in reality a violation of the common law rule requiring a jury of the vicinage or neighborhood, but treats the larger county as the vicinage instead of the smaller one.

In *1 Stephens His. Crim. Law of Eng., p. 276,* that learned English lawyer and judge, 1881-1891, of the Queen's Bench Division of the High Court of Justice, states the common law rule as follows:

"The Queen's Bench Division of the High Court of Justice might sit in any county in England, or try at Westminster or elsewhere offenses brought before it by certiorari from any such county, but in all cases it would have to try indictments found by a grand jury of the county in which the crime was committed. In short, the theory of trial by the neighborhood (vicinetum-visne-venue) has been inflexibly adhered to, though it has been subjected to many exceptions."

The exceptions are enumerated by the author. They are all statutory. Some of them would be sustained in America and some would not.

The first ten amendments of the constitution of the United States contain this provision:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have

been committed, which district shall have been previously ascertained by law."

No one would be so bold as to claim that Congress could authorize the United States courts to transfer the trial of a criminal case from one district to another or from one state to another; and it is equally plain that the trial of a criminal case, in a state where the county is treated as the vicinage, cannot be transferred from the county in which the offense is charged to have been committed, to another county, against the wishes of the accused, without violating that common law right to a jury trial, which is as effectually secured in an American constitution by the words, "The right of trial by jury shall remain," as by a more elaborate provision.

We think we have made it plain that a court should be very careful before it gives much weight to *obiter dicta.* They are the pitfalls of the bench.

SECOND.

What did Congress intend to do, and what did it do by the Act of June 28, 1834?

A careful examination of the debates in the 23d Congress, when the act of 1834 was passed, is necessary in order to understand just what was attempted to be done at that time.

The situation was about as follows: The Bank of U. S. was going out of existence in 1836. There was estimated to be in circulation in the U. S. $80,000,000 of the notes of local and U. S. banks, with about $25,000,000 in silver with which to redeem them and no gold. By the act of 1834 it was proposed to broaden the metallic basis by slightly changing the mint rates of gold and silver so as to encourage the minting and circulation of gold, which

had been previously rated too cheaply, and to provide something to take the place of U. S. bank notes about to be retired in 1836.

The primary object of the act was to encourage the circulation of gold alongside of silver, by raising the mint price of gold. Gold had been greatly undervalued and was forced out of circulation. The chief subject of debate, when the bill was under consideration, was as to just what the correct commercial ratio was. The highest ratio advocated and the one finally adopted was 16 to 1, while the lowest was $15\frac{5}{8}$ to 1. The latter ratio proved to be more nearly correct, and the adoption of the higher ratio was undoubtedly a mistake. It did not correspond to the French or English ratio, undervalued silver and made it a commodity, and by a failure to harmonize with the mint rate of the great bimetallic nation, France, caused disturbances in exchange and furnished valuable arguments for the mono-metallists of a later generation. But be that as it may, every advocate of the bill distinctly disavowed any intention of debasing the coin and contended that even if the ratio of 16 to 1 should prove to be not absolutely correct, the difference would be so small and insignificant that no harm could follow. Had the mint ratio decided upon been the exact commercial ratio no possible harm could have followed, nor could any past obligations have been impaired, for those obligations were made upon a bimetallic basis, and they could be discharged in either metal. As they could have been, and as a matter of fact were discharged in silver at the rate of 371.25 grains to the dollar, no creditor could complain if the gold in the gold coins was reduced to exactly that price. If the old ratio had remained he would never have been paid in gold, nor could he have legally demanded it. By making a mistake in calculation Congress did in effect slightly debase the coinage by over-

valuing gold and making debts contracted on the practical basis of the dollar of 371,25 grains of pure silver, payable in 23.2 grains of gold commercially worth but 369.58 grains of silver according to the average commercial ratio of 1833, the year upon which Congress was undoubtedly basing its action. The commercial ratio in 1833 was 15.93 to 1. According to this commercial ratio there was a loss of seven cents in sixteen dollars or 4.37 mills on the dollar, a mere trifle, but which loss, it was contended, would be made up in other ways. Some writers in citing this act as a precedent for the legality of the debasement of 1878 have fallen into the error of comparing the legal ratio of 16 to 1 to the commercial ratio of 1834, which was considerably less than 1833, viz., 15.73 to 1, at which ratio the debasement did amount to 1.68 cents on the dollar. But Congress could not have known, when considering the question in June, 1834, what the average ratio of that year was to be, but took as a basis the ratio of 1833 or the then current ratio, which must have been about 15.90.

In his speech in the House, June 21, 1834, Mr. Jones, of Georgia, said: "And yet with this fact well known, that gentleman proposes to make the value 1 to 15.625, $1\frac{3}{4}$ per cent less than the commercial value of gold." This statement was unchallenged and discloses the fact that on that day, when the bill passed the house, the commercial ratio was 15.90, which would make the difference six mills in the dollar. But that Congreess had no intention of deliberately debasing the coinage is best evidenced by the fact that the original bill, first reported by the committee, providing for a debased subsidiary coinage of gold and silver, without any provision for redemption, was abandoned by the chairman of the committee, Mr. White, of New York, who himself moved the substitute measure, which was ultimately passed.

It will be remembered that the mint act of the Continental Congress had provided for the silver dollar as the unit. In advocating the double standard, Hamilton, in his Mint Report of 1792 says: "Contrary to the ideas which have heretofore prevailed in the suggestions concerning a coinage for the United States, though not without much hesitation arising from a deference for those ideas, the secretary is, upon the whole, strongly inclined to the opinion that a preference ought to be given to neither of the metals for the monetary unit * * * because this cannot be done effectually without destroying the office and character of one of them as money and reducing it to the situation of mere merchandise, which, accordingly, at different times, has been proposed from different and very reputable quarters, but which would probably be a greater evil than occasional variations in the unit, from the fluctuations in the relative value of the metals, *especially if care be taken to regulate the proportion between them, with an eye to their average commercial value.*"

That is what was attempted to be done by the act of 1834, "to regulate the proportion between them, with an eye to their average commercial value."

A brief reference to the debate on the act of 1834 and a few quotations from the members and Senators participating, will prove that there was no intention on the part of Congress to debase the coinage or to impair past contracts.

The debate in the House will be found reported in the tenth volume of the Debates of Congress, Part IV., pp. 4643-4674; and in the Senate in Volume X., Part II., p. 2122.

IN THE HOUSE OF REPRESENTATIVES.

Mr. Clowney: "Having shown satisfactorily, I trust, that the cause of the present evils in our metallic currency (the only currency known to our constitution) is the undervaluation of gold by our laws, it is evident that the nature of the remedy must be to remove the cause of the evils, by raising the value of gold relatively to silver in our coinage. I must confess, however, that although the cause of the evils and the nature of the remedy are obvious, yet, when we come to apply the remedy we find it an extremely nice, difficult and complicated question to determine what proportion of gold to silver in our coinage is necessary to place the two coins upon an equal footing in commerce, and ensure their concurrent circulation, so that the one may be readily exchanged for the other by tale, to suit convenience or pleasure."

* * * * * * *

"The theory as to the expediency and practicability of adjusting the proportions of gold to silver in our coinage, so as to make them together the standard of value, and preserve their concurrent circulation, has not only been advocated by the highest authority, but its truth has been practically illustrated by the example of one of the wealthiest nations on the globe. Mr. Gallatin, in his letter to the Secretary of the Treasury, in 1829, in speaking of the monetary system of France, where gold and silver coins circulate simultaneously, and where the gold is rated too low in proportion to silver, states 'that, during the last thirteen years, there never has been a premium on silver coins; and never, during that period, has the premium on gold reached one per cent.' He also maintains that the fluctuation in the legal relative value of the two

coins, arising from the demand exceeding or falling short of the supplies of either of the metals is less in amount than the fluctuations in the value of both or either of the precious metals, as compared with that of all other commodities; and hence the fluctuations in the legal relative value of the two coins, when well adjusted, are a quantity that may be neglected; and is, in fact, never taken into consideration at the time of making contracts."

* * * * * * *

"'In the use of both metals,' says Mr. Baring, in his examination before the committee on coins in England, in 1828, 'one of two courses must be taken, either to leave them to chance, and give to the debtor the advantage of the option, as was the case under the old English system, or fix at once which is to be your standard, and adjust, at given periods, your other metal to it. If you want the advantages of the fixity of standard of one metal, with the facilities and conveniences of two, you must take the latter course. The system of occasional adjustment has been practiced in France, and in these matters practical experience is worth all the theories of mere speculation.'"

* * * * * * *

"I am in favor of this proposition, not from any selfish or local considerations, but because I sincerely believe that it is for the public good that both metals should be coined at our mint, and that nothing short of the proportion proposed in the amendment offered by the chairman of the committee will place the two coins upon a level in the commercial world, and ensure their concurrent circulation in the United States."

Mr. Gorham: "That value was fixed by other things than acts of Congress. The government might mark its own coin with what value it pleased, but it could not give it that value; and *if by law they allowed money to be a law-*

ful tender for more than its value, they immediately affected the obligation of contracts, which they were forbidden by the Constitution to do. Their law could no more change the value of gold than it could make gold. The real use of a mint was only to assure the people that the piece stamped was of a certain weight and fineness. If that weight could be stamped in figures, it would be all that was wanted."

Mr. Jones: "In my opinion, this government has no authority by the Constitution to make anything a legal tender in payment of debts. To Congress is given the power 'to coin money and regulate the value thereof.' To the States is retained the power to make gold and silver, and them only, a tender in payment of debts. I know that some gentlemen believe that when the value of coin is fixed by Congress, it becomes necessarily a legal tender, and that the courts will so decide. To this I offer no objection. If such be the legal effect, be it so. One thing, however, is certain: if such be not the legal effect, Congress has no power to make any coin a legal tender; and if this be the legal and necessary effect, then there is no necessity for Congress to do it. This being the case, it is certainly unnecessary to insert it in this bill."

* * * * * * *

"It is admitted by all that the present legal value of gold, compared with silver, to-wit: 1 to 15, is too low, and that it ought to be raised; and how much it will be proper to raise it is a question difficult to determine, and on which there may honestly exist much difference of opinion. Fortunately, however, there is not a wide difference between the amendment offered by the gentleman from New York (Mr. Selden) and the substitute proposed by the chairman of the committee. The amendment proposes 1 to 15.625, as originally inserted in the bill, instead of the ratio, 1 to 16, contained in the substitute. It is my

purpose to call the attention and consideration of the House to the remarks of that gentleman in support of his amendment, and in opposition to the substitute of the honorable chairman of the committee on coins."

* * * * * * *

"We have been told by both these gentlemen, that the proposed value is too high, and that it will have the effect to drive the silver coins from circulation, and make them mere merchandise for exportation. I am free to admit, if there were great difference in their value, this effect might be produced. But, sir, the difference in the value of gold and silver, according to the ratio proposed, will be so small (being less than one per cent) that it will be no more than equivalent to the difference in the expense and risk in transporting them. The gentleman from New York (Mr. Selden) has told you that the difference in the bulk of the two metals will make the risk and expense of shipping silver greater than that of shipping gold. This is correct, and well known to every gentleman upon this floor. And yet with this fact well known, that gentleman proposes to make the value 1 to 15.625, $1\frac{3}{4}$ per cent less than the commercial value of gold."

* * * * * * *

"But, sir, if you make their mint value equal, the necessary consequence will be, that gold will be selected for exportation, from the increased risk and expense of exporting silver. You must make the mint value of gold a little more than silver to secure an equal circulation of both metals; and can three-fourths of one per cent be more than will most probably be necessary to effect so desirable an object?"

* * * * * * *

"The ratio proposed by the director of the mint is also below the average market value for the last five years.

We have seen there is a continual increase in the value of gold, and if the increase of the legal value cause any increase in the market value, it must be evident that one to sixteen (which is about eight-tenths of one per cent over the mint proposition, and only three-fourths of one per cent over the present market value) will, in a short time, be only equal to the increased market value. If we stop short of this, we shall soon be compelled again to increase the value of that metal, or to struggle with the same difficulties which now prevent the circulation of our precious metals."

Mr. Gillet: "Our Constitution has given us the 'power to coin money and regulate the value thereof, and to regulate the value of foreign coins.' This clause of the Constitution confers all the power Congress has over this subject."

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"A farm which is worth a pound of pure gold will still be worth that quantity of gold, whether such gold is coined as sixteen to one of silver, or at a hundred to one. The object to be attained is a certain standard, which shall not, by its constant changes, raise or lower the price of such articles as we have to exchange, or affect outstanding debts. Let us fix our coins as may be most convenient for our fellow-citizens, and other things will find their proper level, and adjust themselves to them as the standard or measure of value."

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Mr. Binney: "The whole question for the House was, then, whether the proposed ratio, which in round numbers might be stated at 1 to 16, did not overvalue the gold; and this was a simple question of fact, depending upon evidence."

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"The proposition originally recommended appeared to have the greatest mass of evidence in its favor, although he would consent to a ratio something higher, for the purpose of meeting the views of other gentlemen; but to go beyond all the evidence, upon a vague speculation that future circumstances might justify it, when the present effect was to do injustice to contracts, and its probable tendency was to displace the silver coins of the country, and to produce the other mischiefs which had been so clearly and ably shown in the remarks of the gentleman from New Yory (Mr. Selden), and in those also of the gentleman from Massachusetts (Mr. Gorham), was a degree of accommodation to opinions, unsupported by argument, which he thought did not merit the approbation of the House. He should vote for the ratio first proposed by the committee, and now again by the gentleman from New York, of 1 to 15.625, which gave an advance to gold beyond its present legal value of 4.166 1-000 per cent; but he could not, in the present state of his information and opinions, vote for the ratio now proposed by the chairman of the committee on coins."

Mr. Cambreleng: "Some objections have been stated which I do not believe well founded. We are alarmed at a mere fractional variation."

IN THE SENATE.

On motion of Mr. Webster, the Senate proceeded to consider the bill to regulate the gold coins of the United States.

Mr. Webster briefly explained the provisions of the bill. He concluded by moving to strike out from the bill the lines making provision for the gold dollar. The amendment was agreed to.

Mr. Ewing said he had made up his mind to vote for the bill, in deference to the opinion of others, although he was of opinion that the relative value of gold had been fixed too high. He adverted to what had been said on the subject of the value being placed at 16 to 1; and also to the various values of the foreign silver coins. He expressed his apprehension that the silver would disappear from among us, and that small notes would take its place. While the Senate admitted the circulation of small notes, they would, in three years, constitute the sole circulation. Still, he should vote for the bill.

Mr. Calhoun advocated the bill in a very few remarks. He thought that wherever silver was protected it would retain its place; and where it was not protected, paper would take its place. He thought the bill safe, and should give it his support.

Mr. Sprague said he could not vote for this bill. He believed that it would throw the evils on the other side. We were creating the same disproportion between gold and silver as at present existed, making a distinction on one side as much too wide as that which now existed on the other. All agreed that the true line was between the two estimates. Why gentlemen should transcend the point which everybody agreed was the true line of value between the two metals, he did not know. No one contended that the true value was 16 to 1, but all believed that it was between 15 and 16.

Mr. Ewing added that the gold had been debased by this bill, which he regretted.

Mr. Calhoun stated that the superintendent of the mint had been consulted.

Mr. Benton said that the debasement was too trifling to be an object of exception.

Mr. Porter expressed his intention to vote against the bill, and asked for the yeas and nays, which were ordered.

Mr. King, of Georgia, stated that the effect of the bill would be to raise the value of gold 4½ per cent, which is only a little above the mercantile value of the article.

Mr. Sprague thought that the bill changed the value 6 per cent, which was more than the true relative proportion. Why was it made more? To establish a legal currency of two metals, their value must exactly correspond. Why adopt an evil by creating a disproportion?

Mr. Webster replied that if it had been imagined that there would have been any evil, it would not have been recommended. He referred to the various modes of computing value, and of the difficulty of coming to an accurate result.

Mr. Calhoun said, the usual custom of foreign countries was to make gold somewhat above the mercantile value. In Spain the relative value of gold was 16 to 1. In Cuba it was 17 to 1.

Thomas H. Benton, in his "Thirty Years in the United States Senate," Vol. 1, p. 469, gives this account of the debates on the act of June 28, 1834:

"RIVAL OF GOLD CURRENCY."

"A measure of relief was now at hand, before which the machinery of distress was to balk, and cease its long and cruel labors; it was the passage of the bill for equalizing the value of gold and silver, and legalizing the tender of foreign coins of both metals. The bills were brought forward in the House by Mr. Campbell P. White, of New York, and passed after an animated contest, in which the chief question was as to the true relative value of the two metals varied by some into a preference for

national bank paper. Fifteen and five-eighths to one was the ratio of nearly all who seemed best calculated from their pursuits to understand the subject. The thick array of speakers was on that side; and the eighteen banks of the city of New York, with Mr. Gallatin at their head, favored that proportion. The difficulty of adjusting this value, so that neither metal should expel the other, had been the stumbling block for a great many years; and now this difficulty seemed to be as formidable as ever. Refined calculations were gone into, scientific light was sought, history was rummaged back to the times of the Roman empire, and there seemed to be no way of getting to a concord of opinion from the lights of science, the voice of history, or the result of calculations. The author of this View had (in his speeches on the subject) taken up the question in a practical point of view, regardless of history, and calculations and the opinions of bank officers, and looking to the actual and legal circulation of the two metals in different countries he saw that this equality and actuality of circulation had existed for above three hundred years in the Spanish dominions of Mexico and South America, where the proportion was 16 to 1.

"Taking his stand upon this single fact as the practical test which solved the question all the real friends of the gold currency soon rallied to it. Mr. White gave up the bill which he had first introduced and adopted the Spanish ratio. Mr. Clowney, of South Carolina, Mr. Gillet and Mr. Cambreleng, of New York; Mr. Ewing, of Indiana; Mr. McKim, of Maryland, and other speakers gave it a warm support. Mr. John Quincy Adams would vote for it, though he thought the gold was overvalued, but if found to be so, the difference could be corrected hereafter."

THIRD.

The decision of the Supreme Court of the United States in the Legal Tender cases, 12 Wall., 457, was more an effort to protect debtors on their contracts, than it was to establish the doctrine that Congress has power by issues of depreciated paper money to impair contracts.

The first act making United States treasury notes a legal tender was approved February 25, 1862. During the civil war three different issues of such notes were authorized by Congress. The aggregate amount of the three issues was $450,000,000.

12 U. S. Stat., 345, 532, 709.

In the case of *Hepburn vs. Griswold, 8 Wall., 603,* decided at December term, 1869, it was held that the legal tender acts were invalid so far as they purported to apply to contracts entered into before they were passed.

Justices Miller, Swayne and Davis dissented in an opinion delivered by Justice Miller, and among the grounds stated are the following:

"Upon the enactment of these legal tender laws they were received with almost universal acquiescence as valid. Payments were made in the legal tender notes for debts in existence when the law was passed, to the amount of thousands of millions of dollars, though gold was the only lawful tender when the debts were contracted. A great if not larger amount *is now due under contracts made since their passage,* under the belief that these legal tenders would be valid payment.

"The two houses of Congress, the President who signed the bill, and fifteen state courts, being all but one that has passed upon the question, have expressed their belief in the constitutionality of these laws.

"With all this great weight of authority, this strong concurrence of opinion among those who have passed upon the question, before we have been called to decide it, whose duty it was as much as it is ours to pass upon it in the light of the Constitution, are we to reverse their action, *to disturb contracts*, to declare the law void, because the necessity for its enactment does not appear so strong to us as it did to Congress, or so clear as it was to other courts?"

Hepburn vs. Griswold was overruled in the *Legal Tender Cases, 12 Wall., 457*, decided at the December term, 1870, but the opinion of the Court as delivered by Justice Strong, makes the following presentation of the main fact or ground which induced the Court to make the decision it did.

"*It is also clear that if we hold the Acts invalid as applicable to debts incurred, or transactions which have taken place since their enactment, our decision must cause, throughout the country, great business derangement, widespread distress, and the rankest injustice.* The debts which have been contracted since February 25, 1862, constitute, doubtless, by far the greatest portion of the existing indebtedness of the country. They have been contracted in view of the Acts of Congress declaring treasury notes a legal tender, and in reliance upon that declaration. Men have bought and sold, borrowed and lent, and assumed every variety of obligations contemplating that payment might be made with such notes. *Indeed, legal tender treasury notes have become the universal measure of values.* If now, by our decision, it be established that these debts and obligations can be discharged only by gold coin; *if, contrary to the expectation of all parties to these contracts*, legal tender notes are rendered unavailable, the government has become an instrument of the grossest injustice; *all debtors are loaded with an obligation it was never contemplated they should as-*

sume; a large percentage is added to every debt, and such must become the demand for gold to satisfy contracts, that ruinous sacrifices, general distress, and bankruptcy may be expected. *These consequences are too obvious to admit of question.* And there is no well founded distinction to be made between the constitutional validity of an Act of Congress declaring treasury notes a legal tender for the payment of debts contracted after its passage, and that of an act making them a legal tender for the discharge of all debts, as well as those incurred before as those made after its enactment. There may be a difference in the effects produced by the acts, and in the hardship of their operation, but in both cases the fundamental question, that which tests the validity of the legislation, is, can Congress constitutionally give to treasury notes the character and qualities of money? Can such notes be constituted a legitimate circulating medium, having a definite legal value? If they can, then such notes must be available to fulfil all contracts (not expressly excepted) solvable in money, without reference to the time when the contracts were made. Hence it is not strange that those who hold the Legal Tender Acts unconstitutional when applied to contracts made before February, 1862, find themselves compelled also to hold that the Acts are invalid as to debts created after that time, and to hold that both classes of debts alike can be discharged only by gold and silver coin.

"*The consequences of which we have spoken*, serious as they are, must be accepted, if there is a clear incompatibility between the Constitution and the legal tender acts. *But we are unwilling to precipitate them upon the country* unless such an incompatibility plainly appears."

After the close of the civil war, the Supreme Court of the United States, in passing upon the constitutionality

of the legal tender laws, was confronted with the same sort of condition as confronted Congress and the States at the close of the Revolutionary war. June 28, 1780, Congress passed the following:

RESOLUTIONS OF CONGRESS.

"Congress resumed the consideration of the report of the committee on loan office certificates.

Whereas, Congress on the 18th day of April last, resolved in the words following, viz: "That Congress will, as soon as may be, make such provision for discharging or continuing the loans that have been made to these United States on loan-office certificates, so as that the holders of them shall sustain no loss thereon by any depreciation of the bills loaned subsequent to the respective dates of the said certificates; therefore,

Resolved, That the principal of all loans that have been made to these United States shall finally be discharged by paying the full current value of the bills when loaned, which payments shall be made in Spanish milled dollars, or the current exchange thereof in other money at the time of payment.

That the value of bills when loaned shall be ascertained for the purpose above mentioned, by computing thereon a progressive rule of depreciation, commencing with the first day of September, 1777, and continuing to the 18th day of March, 1780, in geometrical proportion to the time, from period to period, as hereafter stated, assuming the depreciation at the several periods to be as follows:

On the first day of March, 1777, one dollar and three-quarters of a dollar of the said bills for one Spanish milled

dollar; on the first of September, 1778, as four of the former for one of the latter; on the first of March, 1779, as ten of the former for one of the latter; on the first of September, 1779, as eighteen of the former for one of the latter; and on the 18th day of March, 1780, as forty of the former for one of the latter.

That the principal of all certificates that have been taken out since the 18th day of March last shall be discharged at the rate of one Spanish milled dollar, or the current exchange thereof in other money at the time of payment, for forty dollars of said bills of credit received on loan.

That the principal of all certificates that shall hereafter be taken out until the further order of Congress be discharged at the same rate and in the same manner as those that have been taken out since the 18th day of March last.

That the interest on all loan office certificates at the rate of 6% per annum, computed on the principal ascertained as aforesaid, shall be discharged only in like manner as the principal until the principal shall be paid; provided, nevertheless, that the same interest and mode of payment on certificates taken out before the first day of March, 1778, shall be continued as at present, until the principal ascertained as aforesaid be ready to be discharged.

Ordered, That the Board of Treasury prepare the proper tables for the direction of the commissioners of the continental loan office in the several States in paying off the principal and interest of loans agreeably to the foregoing resolutions."

3 Journal of Congress, p. 473.

VIRGINIA LEGISLATION.

In 1781 the Virginia Assembly passed the following act:

"An act directing the mode of adjusting and settling the payment of certain debts and contracts, and for other purposes.

I. Whereas, The paper currency of this State hath, from various causes, greatly depreciated in its value, insomuch that it is neither a proper medium of circulation nor a just standard whereby to settle and adjust debts and contracts, and it hath therefore become absolutely necessary to declare that the same shall no longer pass current, except in payment of certain taxes calculated for the express purpose of calling in and redeeming the same.

II. And whereas, The good people of this State will labour under many inconveniences for want of some rule, whereby to settle and adjust the payment of debts and contracts entered into and made between the first day of January, one thousand seven hundred and seventy-seven, and the first day of January, one thousand seven hundred and eighty-two, unless some rule shall be by law established for liquidating and adjusting the same, so as to do justice as well to the debtors as creditors: *Be it therefore enacted by the General Assembly*, That from and after the passing of this act, all debts and contracts entered into or made in the current money of this State or of the United States, excepting at all times contracts entered into for gold and silver coin, tobacco, or any other specific property, within the period aforesaid, now remaining due and unfulfilled, or which may become due at any future day or days, for the payment of any sum or sums

of money, shall be liquidated, settled and adjusted agreeable to a scale of depreciation hereinafter mentioned and contained, that is to say, by reducing the amount of all such debts and contracts to the true value in specie at the days or times the same were incurred or entered into; and upon payment of said value so found in specie, or other money equivalent thereto, the debtors or contracts shall be forever discharged of and from the said debts or contracts, any law, custom or usage to the contrary in any wise notwithstanding: *Provided, always, nevertheless,* That in all cases where actual payments have been made, by any person or persons, of any sum or sums of the aforesaid paper currency, at any time or times, either to the full amount or in part payment of any debt, contract or obligation whatsoever, the party paying the same, or upon whose account such sum or sums have been actually paid, shall have full credit for the nominal amount of such payments, and such payments shall not be reduced, anything in this act or in any other act or acts, to the contrary in any manner notwithstanding.

III. And whereas, Many of the inhabitants of this state have been exposed to the ravages of the enemy, and other distresses incident to a state of war, by means whereof they have been by violence deprived of the fruits of their labour and industry, and thereby rendered for the present incapable of paying many of their just debts: *Be it therefore enacted,* That in all cases, except such as are hereafter excepted, where judgment has been or may hereafter be obtained for the payment of any sum or sums of money, execution shall not issue thereupon before the first day of December, one thousand seven hundred and eighty-three, except when judgment has been or may be obtained for any sum or sums of money due to the commonwealth, for taxes or otherwise, against any public

collector, or any other person or persons whatsoever. And also in all cases where any such judgment hath been or may hereafter be obtained for monies due for the rent or use of any lands, plantations, houses, ferries or fisheries, or for the hire of any slave or slaves, or of any servant or servants: *Provided*, That all judgments so staid shall carry interest at the rate of five per centum per annum until paid.

IV. *And be it further enacted*, That the following scale of depreciation shall be the rule to determine the value of the several debts, contracts and demands in this act mentioned, compared with silver and gold:

In the year one thousand seven hundred and seventy-seven:

January one and a half, February one and a half, March two, April two and a half, May two and a half, June two and a half, July three, August three, September three, October three, November three, Decembr four.

In the year one thousand seven hundred and seventy-eight:

January four, February five, March five, April five, May five, June five, July five, August five, September five, October five, November six, December six.

In the year one thousand seven hundred and seventy-nine:

January eight, February ten, March ten, April sixteen, May twenty, June twenty, July twenty-two, August twenty-two, September twenty-four, October twenty-eight, November thirty-six, December forty.

In the year one thousand seven hundred and eighty:

January forty-two, February forty-five, March fifty, April sixty, May sixty, June sixty-five, July sixty-five, August seventy, September seventy-two, October seventy-three, November seventy-four, December seventy-five.

In the year one thousand seven hundred and eighty-one:

January seventy-five, February eighty, March ninety, April one hundred, May one hundred and fifty, June two hundred and fifty, July four hundred, August five hundred, September six hundred, October seven hundred, November eight hundred, December one thousand.

V. *And be it enacted,* That where a suit shall be brought for the recovery of a debt, and it shall appear that the value thereof hath been tendered and refused; or where it shall appear that the non-payment thereof is owing to the creditor; or where other circumstances arise which, in the opinion of the court before whom the cause is brought to issue, would render a determination agreeable to the above table unjust; in either case it shall and may be lawful for the court to award such judgment as to them shall appear just and equitable. And where any verdict hath been given for damages between the first day of January, one thousand seven hundred and seventy-seven, and the first day of January, one thousand seven hundred and eighty-two, and the judgment remains unsatisfied, it shall be lawful for the several courts within this commonwealth, in a summary way, by motion to them made, either before any execution issues, or at the return day of such execution, to fix, settle and direct at what depreciation the said damages shall be discharged, having regard to the original injury or contract on which the damages are founded, and any other proof or circumstances that the nature of the case will admit."

Hening's Statutes at Large (Va.), Vol. X., p. 471.

Similar acts with more or less variation were passed by all the States. The Virginia act was not passed until November, 1781, and is very much like the act passed in Rhode Island in November, 1780.

Bolles, in his "Financial History of the United States, 1774-1789," p. 183, closes his summary of the Rhode Island statute with this comment:

"No one in that State, or any other, seems to have questioned the propriety, either of repealing the legal tender laws, or of adjusting the liability under contracts and obligations incurred during the three years and more during which paper money was depreciating prior to the repeal of the legal tender laws, by the standard of justice."

The Virginia statute was construed and enforced by the Supreme Court of the United States in an opinion by Chief Justice Marshall.

In *Faw vs. Marsteller, 2 Cranch., 10*, it appeared that August 5, 1779, a deed was made of a lot in Alexandria in which a ground rent of £26 per annum "current money of Virginia," was reserved. The Circuit Court for the District of Columbia, sitting as a court of chancery, decreed that the rents which accured during the existence of paper money should be reduced according to the scale for the time when they became payable, but that the subsequent rents should be paid in specie. This decree was reversed by the Supreme Court of the United States and a decree entered requiring the court below to ascertain what was the actual annual value in specie, or in other money equivalent thereto, of the lot on the 5th day of August, 1779, and that the amount so ascertained should be allowed as rent in the accounts of the parties.

The following extract from the opinion of the Court, at p. 25, shows the view the Court took of the statute:

"It seems to be the date, and not the duration of the contract which was regarded by the Legislature. The act is applied directly to the date of contract, and the motive for making it was, that contracts entered into during the circulation of paper money, ought in justice to be dis-

charged by a sum differing in intrinsic value from the nominal sum mentioned in the contract, and that when the Legislature removed the delusive standard by which the value of the thing acquired had been measured, they ought to provide that justice should be done to the parties."

The statutory scale of depreciation adopted in Massachusetts was enforced by the Supreme Judicial Court of that State in a case decided in 1808.

Edes vs. Goodridge, 4 Mass., 103.

Without any act of Congress or State legislation the Supreme Court of the United States adopted the same principle in determining the amount to be recovered on a note or contract for the payment of money which was entered into within the Confederate lines during the civil war. The recovery was limited to the value in the lawful money of the United States of Confederate money at the time and place when and where the note or contract was made.

Thorington vs. Smith, 8 Wall., 1.
Stewart vs. Salomon, 94 U. S., 434.

In at least one of the Confederate States (North Carolina), an act was passed after the war, establishing a scale of depreciation of Confederate money. The act will be found in the brief of counsel as reported in the *Confederate Note Case, 19 Wall., 548;* and it was considered and construed in the opinion of the Court, and also in the dissenting opinion of Mr. Justice Bradley, in *Wilmington, etc., R. R. Co. vs. King, 91 U. S., 3.*

RUSSIAN FINANCIAL JUSTICE.

Russia was on a depreciated paper basis from the Crimean war until 1897, a period of over forty years. Having accumulated a large amount of gold, over 1,200,000,000 rubles, with which to resume specie payments, the imperial government was confronted with this problem. The average value of a credit note for three years before 1897 was found to have been two-thirds as much as gold. A gold ruble contained 100 copecks, and a credit note for one ruble was worth 66 2-3 copecks in gold. The silver in a silver ruble, however, was only worth 45 copecks in gold. If specie payments were resumed on a silver basis creditors would suffer to the amount of 21 2-3 copecks on the ruble; and if specie payments were resumed on a gold basis debtors would suffer to the amount of 33 1-3 gold copecks on the ruble. To avoid the injustice of either one of these alternatives, M. de Witte, the finance minister, adopted this wise and just plan. The credit notes were redeemed in gold at their average value for the preceeding three years, that is, at the rate of two-thirds of a gold ruble for each paper money ruble. The pure gold in a gold ruble was reduced from 1.161 grains to .774 grains, or one-third; and in that way the resumption of specie payments was accomplished without harm to either debtors or creditors.

We obtained these facts from M. de Routkowsky, the courteous and accomplished financial agent of the Russian government in Washington.

AMERICAN FINANCIAL INJUSTICE.

With the impressive historical example furnished by the statesmen of the Revolutionary war, at the close of the struggle for independence, to enlighten them, and the solemn warning of the Supreme Court of the United States in the Legal Tender cases to quicken their understanding, it must be regarded as most extraordinary and inexplicable that the two Houses of Congress would pass the act of January 14, 1875 for the resumption of specie payments January 1, 1879 without making any provision whatever to lessen the burden or to soften the blow that was to fall with crushing force upon the debtor and industrial classes. Accompanied as it was by a further enhancement of debts and taxes, caused by the demonetization of silver by the United States and Europe, it is safe to say that the pecuniary obligations and current expenses and annual fixed charges of the people of the United States were quadrupled; and we may add that this caused, to use the language of the Supreme Court of the United States, "throughout the country, great business derangement, widespread distress, and the rankest injustice." The only explanation that suggests itself is, that the civil war produced a powerful, avaricious, and conscienceless creditor and money-lending class, who under the cloak of appeals to the patriotism and integrity of the people, succeeded in enormously increasing the value of their own holdings, and in inflicting upon the country in a period of less than twenty-five years a greater absorption and concentration of wealth than had been possible in two hundred and fifty years of prior American history.

Be this as it may, this much is certain, that the learned judges of the Supreme Court of the United States in deciding the Legal Tender cases, 12 Wall., 457, were influenced by the fact that a decision holding the legal tender acts unconstitutional would have impaired the immense volume of contracts and obligations then outstanding, and put upon the debtors in those contracts a burden not contemplated when the contracts were entered into by the parties thereto.

The views we have so far expressed relative to the *obiter dicta* of the Supreme Court of the United States on the coinage clause of the Constitution are supported by Prof. Christopher G. Tiedeman, of New York University, in his pamphlet entitled "Silver Free Coinage and the Legal Tender Decisions," published by the American Academy of Political and Social Science, in March, 1897; but that article is subject to this criticism, that if the provision of the Bland-Allison Act making silver dollars a legal tender is valid, all contracts since entered into must be held to be subject to it, and there is no ground on which the Court could declare a free coinage bill unconstitutional as applied to past contracts, unless the Court goes back to the Bland-Allison Act and holds its legal tender clause invalid.

FOURTH.

What were the real grounds of the decision of the Supreme Court of the United States in Juillard vs. Greenman, 110 U. S., 444?

That case was decided in 1884, long after the civil war was over, and five years after the resumption of specie payments. There was no longer any occasion to render such a decision for the protection of debtors; no war was in progress; and the particular treasury notes used as a tender in the case before the Court had been once redeemed in gold by the government and had been re-issued under an act of Congress authorizing such re-issue. The conditions were favorable for obtaining a decision overruling or qualifying the doctrine established by the prior judgments of the Court, and it was expected by many that the Court would hold that the power of Congress to make treasury notes a legal tender was one of the war powers of the government under the constitution, and that it was a power that could not be exercised in time of peace. Of the nine judges on the bench, three of them had participated in the former decisions, one of them as a dissenting justice. The Court, however, refused to disturb the prior rulings, and made this announcement: "Upon full consideration of the case the Court is unanimously of the opinion that it (the case) cannot be distinguished in principle from the cases heretofore determined, reported under the names of the *Legal Tender Cases, 12 Wall, 457; Dooley vs. Smith, 13 Wall., 604; R. R. Co. vs. Johnson, 15 Wall., 195; and U. S. vs. R. R. Co., 22 Wall., 105;* and all the judges except Mr. Justice Field, who adheres to the views expressed in his dissenting opinions in those cases, are of opinion that they were rightly decided."

The opinion of the Court, as delivered by Mr. Justice Gray, then proceeds to state the grounds upon which the Court based its judgment. The doctrine of the implied powers of Congress under the Constitution is exhaustively examined, and applying that doctrine to the power of Congress to borrow money on the credit of the United States, the conclusion of the Court is stated as follows:

"It appears to us to follow, as a logical and necessary consequence, that Congress has the power to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments. The power, as incident to the power of borrowing money and issuing bills or notes of the government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts, was a power universally understood to belong to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States. The governments of Europe, acting through the monarch or the legislature, according to the distribution of powers under their respective constitutions, had and have as sovereign a power of issuing paper money as of stamping coin. This power has been distinctly recognized in an important modern case, ably argued and fully considered, in which the Emperor of Austria, as King of Hungary, obtained from the English Court of Chancery an injunction against the issue in England, without his license, of notes purporting to be public paper money in Hungary. *Austria vs. Day, 2 Giff., 628, and 3 De G. F. & J., 217.* The power of issuing bills of credit and making them, at the discretion of the legislature, a tender in payment of private debts, had long been exercised in this country by the several colonies and

States; and during the Revolutionary War the States, upon the recommendation of the Congress of the Confederation, had made the bills issued by Congress a legal tender. See *Craig vs. Mo., 4 Pet., 435, 453; Briscoe vs. Bank of Ky., 11 Pet., 257, 313, 334-336; Legal Tender Cases, 12 Wall., 557, 558, 622;* Phillips, American Paper Currency, *passim.* The exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the United States."

Historians and economists have made very strong criticisms of this reasoning, that of Bancroft, the historian, being especially clear and convincing.

2 Bancroft's Hist. Const. U. S., pp. 132-136.

But this is a controversy we have no desire to open, and we refer to it mainly for the purpose of showing that the decision was a construction of the power of Congress to borrow money; and that so far as the opinion considered the power of Congress to coin money it was outside of and beyond the case before the Court.

Our own opinion is that the action of Congress, in passing the legal tender acts, and of the people in accepting them as constitutional, in their heroic and successful efforts to preserve the Union and the Constitution, gave the power of Congress to borrow money a practical construction, of such a grand, imposing and irresistible character, that the Court was bound to recognize it as conclusive and final, no matter what it may have found the original meaning of the Constitution to have been.

Mr. Justice Gray, who wrote the opinion of the Court, was a member (and for a number of years Chief Justice) of the Supreme Judicial Court of Massachusetts from August 23, 1864, to January 9, 1882, when he was sworn

in as an Associate Justice of the Supreme Court of the United States. During his service on the Supreme Court of his State, he participated in decisions made at the January term, 1867, sustaining the constitutionality of the legal tender laws passed by Congress during the civil war.

In *Essex Company vs. Pacific Mills, 14 Allen, 389*, the contract was one to deliver a given number of ounces of silver of a specified fineness and the Court, in an opinion by Hoar, J., said:

"We have to determine, therefore, for what sum the damages should be assessed according to this rule, upon the facts agreed. It is agreed that the market value of the silver would be different, as it should be computed in the gold coins which the law regards as money, or in the treasury notes which the statutes of the United States have made a legal tender for the payment of debts. The defendants insist that the value should be estimated in coin. In support of this proposition, they have submitted a long and able argument to show that Congress has no constitutional power to make these notes a legal tender, or to give them the qualities of lawful money. We do not regard it as consistent with the duties of this Court to undertake at his time to consider or pass upon this question as an original question of constitutional right. *These notes practically constitute, and for nearly five years have constituted, the money of the country. The pecuniary transactions of the whole people have been adapted to this state of things, and interests of an incalculable amount are affected by it.* The validity of the acts of Congress under which they were issued has been affirmed, so far as we are aware, by every judicial tribunal in which the question has been presented; and has been recognized in various ways by the action of

the State governments. There have been other acts of the national government which, however disputable on original principles, must be taken to be practically settled by public acquiescence, and the magnitude of the interests involved. The duty of deciding the limits of the constitutional powers of Congress, where they affect private rights, belongs peculiarly to the Supreme Court of the United States; and it is enough for us to say that, in the absence of any decision by that tribunal, it does not seem to us proper for a State court, upon any views of construction which they may entertain, to treat the constitutionality of a statute of the United States, *which so deeply affects all the relations of property in the community, and has been so long in operation*, as an open question."

In *Sears vs. Dewing, 4 Allen, 413*, a lease dated August 14, 1828, for a hundred years, provided for the payment of a yearly rent of "four ounces two penny weights and twelve grains of pure gold in coined money," and the court gave the plaintiff a judgment for the market value of the gold in United States legal tender notes. Mr. Justice Gray himself wrote the opinion of the Court, concluding as follows:

"The only remaining question is of the principle upon which the market value of this commodity is to be assessed; and upon this question, if it is to be treated as a commodity, the opinion of the Court is unanimous that it must be assessed as of the time when each quarter's rent became due by the terms of the lease, in that kind of currency in use as lawful money, which is the most common, and in which therefore, in the absence of special agreement or usage, all values of commodities in the market are estimated, namely, in treasury notes of the United States, made by acts of Congress a lawful tender

for the payment of debts between individuals; and that those acts, deliberately passed by the Congress and put in force by the executive department of the United States in carrying out a system and policy which they deeemed proper and necessary to the effectual exercise of the supreme powers vested in the national government by the Constitution; which involve no principle of liberty, but merely the nature of the currency and the mode of assessing damages for breach of contracts; *upon the basis of which the whole business of the country for five years has been conducted;* and the validity of which, though not passed upon by the final arbiter of such questions, the Supreme Court of the United States, has been recognized by the executives and legislatures of many States, and by the judgment of the highest court of every State in which it has been disputed; cannot, in the face of such a weight of concurrent authority, legislative, executive and judical, *and of practical construction by the people for years in a matter affecting their daily business,* be now declared by this Court, upon theoretical objections, to be so clearly unconstitutional as not to have the force of law in this commonwealth. *Essex Co. vs. Pacific Mills, ante, 389.* To such a case, in a court whose jurisdiction is limited to a single State, the words of Chief Justice Marshall in an analogous case apply with peculiar force: "A doubtful judgment, one on which human reason may pause, and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned," "if not put at rest by the practice of the government, ought to receive a considerable impression from that practice. *An exposition of the Constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded."* McCullock vs. Maryland, 4 Wheat., 401.

It involves no disrespect for Mr. Justice Gray to say that in our judgment the practical construction, placed upon the constitution during the momentous events of the civil war, and relied upon by him as a judge of the Supreme Court of Massachusetts, as a good and sufficient reason for sustaining the constitutionality of the legal tender acts, is a much more satisfactory and convincing argument than his subsequent attempt as a judge of the Supreme Court of the United States to prove that such was the original meaning of the constitution.

The English constitution is elastic, but elasticity has not prevented it from growing and developing in the direction of a government by the people, and a greater civil and religious liberty for the individual. The constitution of the United States is supposed to be absolutely rigid, and the Supreme Court of the United States proceeds upon the theory that when the court has ascertained the meaning of the constitution, upon any question, as it was understood at the time of its adoption, it is the sworn duty of the court to decide accordingly. This permits as much elasticity as is within the limits of the field of legitimate interpretation, but no more; and it is therefore not surprising that there should be at times a tendency to exercise a great deal of freedom in determining what the original meaning of the constitution was. There is much good philosophy and sound sense in the proposition, that the Nation itself can by practical construction give the constitution a meaning that it did not originally possess, and that it is the duty of the Supreme Court of the United States, on all fit and proper occasions, to recognize such modifications, as conclusive and final, without entering into any false or fallacious reasoning to show that the original meaning of the instrument was in accord with its practical construction.

The constitution of the United States and all our State

constitutions provide that no person shall be deprived of life, liberty or property except by the "law of the land" or by "due process of law." This provision is first found in Magna Charta, but it would be a most absurd proposition that it has the same meaning to-day that it had over six hundred years ago; and it would be equally absurd to suppose that it has not a deeper, broader and more positive and definite meaning at the close of the nineteenth, than it had during the close of the eighteenth century.

It is impossible to give the legal tender decisions of the Supreme Court of the United States careful study and consideration without realizing that the great fact or circumstance which led the court to decide as it did, was the fact that for the purpose of carrying on the war for the preservation of the Union, and the supremacy of the constitution, substantially the whole country, and all the people, did accept the legal tender acts as valid, and did make use of the treasury notes issued under them, as the actual measure of value, on which nearly all the business of the country—in the aggregate an enormous volume of transactions—was carried on.

This much is certain, that if the question had been submitted to the Supreme Court of the United States soon after the act of February 25, 1862, was passed, that act would have been held invalid, both as to future and past contracts. We think it is equally certain that if the country had gone through the civil war on a specie basis, and the immense volume of public and private indebtedness which existed at the close of the war, had been contracted with reference to that basis, and the value of all classes of property for the purposes of taxation, and for investment or sale, had been fixed in specie, and a legal tender act had then been passed, as the dream of some monetary enthusiast, it would have been promptly held

unconstitutional, and by the very same judges who declared the legal tender acts of the civil war valid.

Rightfully or wrongfully, the people of the United States from January 1, 1879, down to the present hour, have transacted business under the single gold standard, and as there is nothing in the way, except *obiter dicta*, now is the proper time to hold that Congress has no power to impair contracts by alterations in the weight or fineness of the coin, and no power to issue coin below the established standard in weight or fineness, and make the same a legal tender, except when it provides for the redemption of such debased coin, in coin of full value.

Mr. Justice Gray, speaking for the Supreme Court of Massachusetts in *Sears vs. Dewing, 14 Allen, 413*, decided in 1867 and hereinbefore referred to, had occasion to mention the coinage laws of the United States, and to make the following introductory statement:

"The power to coin money and to regulate the value thereof and of foreign coin is universally held to be a prerogative of sovereignty, and is conferred by the constitution upon the Congress of the United States. The amount of the alloy, the weight and fineness of the coin, its intrinsic value as compared with its standard or nominal value, *are subject to the arbitrary and absolute discretion of the sovereign power; and the experience of all ages and countries has shown* that this discretion is often so exercised, upon grounds of supposed policy or convenience, *as to debase the coin*, and to enhance its nominal value as money above the real value of the metal which is contained in it."

Here we have the fountain head, the original source, of the *obiter dictum* of Mr. Justice Gray in *Juillard vs. Greenman, 110 U. S., 444;* and we find that it had its start in an erroneous view of the teachings and lessons of the

coinage history of England. The greater part of the constitution of the United States, and all of its bill of rights, were derived from the constitution and common law of the mother country. *"The experience of all ages and countries,"* is referred to by the learned justice, but considering the sources of the constitution of the United States, it is sufficient to defeat and overturn his construction of the coinage clause of the constitution, to show that he was in error so far as the experience of England and her American colonies are concerned. This is what we have attempted to do in the main part or first general subdivision of this brief. To what extent we have succeeded, we submit to the considerate judgment of the court.

III.

The only way in which Congress can, under the Constitution, issue a debased coin, and make it a legal tender, is to provide for its redemption, that is, to issue it as a symbolical promise to pay, or to redeem, in coin of full value.

A subsidiary coinage for the purpose of securing a sufficient supply of small change is a modern invention, first resorted to in England in 1816, or twenty-nine years after the Constitution of the United States was adopted.

We have already quoted in this brief the English statute of 1774 limiting the legal tender quality of the silver coins of the realm by tale to 25*l*; but this left silver by weight a full legal tender, that is, without limit as to amount, and the silver coins continued to be as before the standard coin of the realm.

In 1798 the further coinage of silver was suspended by the following act:

38 GEO. III., C. 59 (1798).

"II. And whereas his Majesty has appointed a committee of his privy council to take into consideration the state of the coins of this kingdom, and the present establishment and constitution of his Majesty's mint, and inconvenience may arise from any coinage of silver until such regulations may be framed as shall appear necessary: and whereas, from the present low price of silver bullion, owing to temporary circumstances, a small quantity of silver bullion has been brought to the mint to be coined, and there is reason to suppose that a still further quantity may be brought, and it is therefore necessary to suspend the coinage of silver *for the present;* be it therefore enacted, That, from and after the passing of this act, no silver bullion shall be coined at the mint, nor shall any silver coin that may have been coined there be delivered; any law to the contrary in anywise notwithstanding."

41 Eng. Stat., 725.

The foregoing statute, closed the mints of England to silver, and in combination with other causes, resulted in "the heaviest export of silver probably that England has ever experienced." This is the opinion expressed by Prof. Shaw in his "History of Currency," at p. 241, where he makes the following statement relative to this exportation of silver, and its effect on the currency:

"During the ten years, 1801-10, nearly 10 millions sterling of silver was exported from England (over 38,176,016 oz.), while the gold exports amounted only to £2,088,483, so that, of the total export, silver formed 82 per cent (net amounts used in both cases). It is still well known to what straits this export of silver put the country. In almost every town where there was any employment of

labor the tradesmen were obliged to issue token money of their own—shilling tokens, sixpenny tokens, half-crown and five-shilling promissory notes. Every conceivable form of hand-to-mouth unauthorized currency was resorted to, in order to relieve the needs of the situation caused by want of silver coins. And stories are still remembered of the straits to which the working classes were driven in order to make their purchases at the week end with one pound notes for which they could get no exchange."

Shaw's statement is corroborated by the preamble to the following statute:

52 GEO. III., C. 157 (1812).

"An act to prevent the issuing and circulating of pieces of gold and silver, or other metal, usually called tokens, except such as are issued by the Banks of England and Ireland respectively.

"Whereas various pieces of gold or silver, and mixed metals composed in part of gold or silver, usually denominated tokens, have lately been and are issued and circulated by persons residing in various parts of the United Kingdom, in great quantities, for nominal sums of money usually expressed thereon, much above the real value of the metals of which the same are composed: And whereas it is expedient that the further making and issuing of such tokens should be prohibited, and that the circulation of those already made or issued should also be prohibited after a limited period; May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same," etc.

52 Eng. Stat., 878.

The act prohibited the issuing and circulation of tokens except those issued by the banks of England and Ireland, and it was amended and continued by subsequent acts.

53 Eng. Stat., 115, 446.
54 Eng. Stat., 8.

Finally Parliament passed the famous statute of 1816, which placed England on a single gold standard with a subsidiary coinage of silver.

56 GEO. III., C. 68 (1816).

The first three sections repealed so much of the 18 Chas. II., c. 5; 7 and 8 Will. III., c. 1, 14 Geo. III., c. 1, s. 2, as relates to the coinage of silver, and 38 Geo. III., c. 59, sec. 2, suspending the coinage of silver. Section four provided for the future coinage of silver at the rate of sixty-six shillings to the pound troy, as more fully stated in section nine. Sections five, six, seven and eight provide for the recoinage of the then existing silver coins. Sections nine, ten, eleven and twelve are as follows:

IX. And be it further enacted, That from and after such day as shall be named and appointed in and by any proclamation which shall be made and issued for that purpose, by or on behalf of his Majesty, by and with the advice of his Majesty's privy council, it shall and may be lawful for any person or persons, native or foreigner, to bring any foreign coin, or any other coin, or reputed coin, plate or bullion of silver, in mass, molten or alloyed, or any sort of manufacture of silver, and to deliver the same at his Majesty's mint in London, to be there melted down and coined into current silver coins of this kingdom; and such silver coin, plate, bullion or manufacture so brought or delivered, shall be assayed at the said mint, and melted down and coined with all convenient speed, into

silver coins of a standard in fineness of eleven ounces two pennyweights of fine silver, and eighteen pennyweights of alloy in the pound troy, and in weight after the rate of sixty-six shillings to every pound troy, whether the same be coined in crowns, half crowns, shillings or sixpences, or pieces of a lower denomination; and that as soon as conveniently may be after any such silver coin, plate, bullion or manufacture respectively, so brought to the mint, shall be melted and assayed, there shall be delivered to the person bringing in and delivering the same a sum in silver coins, of crowns, half crowns, shillings or sixpences, after the rate of sixty-two shillings of the standard fineness and weight hereinbefore mentioned, for every pound troy of standard silver of the fineness aforesaid, by such person brought and delivered into the mint, and so proportionately for a greater or lesser weight; and that for the defalcation or diminution and for the charge for the assaying, coinage and waste in coinage of all such silver so to be brought to the mint as aforesaid, there shall and may be retained at the said mint the sum of four shillings of the standard and weight aforesaid, for every pound troy of such standard silver so brought in and delivered, and so proportionately for any greater or lesser weight, making in the whole after the rate of sixty-six shillings for every pound troy of such standard silver; anything in any act or acts in force in *Great Britain* or *Ireland,* immediately before the passing of this act, to the contrary in anywise notwithstanding.

X. And be it further enacted, That an account shall be kept at the mint of the amount of all sums of money arising from the allowance of four shillings for every pound troy of silver to be retained at the said mint, in manner aforesaid; and that all such sums so retained shall in the first place be applied in or towards the payment of the expenses of the coining of such silver; and

the surplus thereof (if any) after the payment of such expenses, shall be carried to and made part of the consolidated fund.

'XI. And whereas at various times heretofore the 'coins of this realm of gold and silver have been equally 'a legal tender for payments to any amount, and great 'inconvenience has arisen from both those precious metals 'being concurrently the standard measure of value, and 'equivalent for property; and it is expedient that the gold 'coin made according to the indentures of the mint should 'henceforth be the sole standard measure of value and 'legal tender for payment, without any limitation of 'amount, and that the silver coin should be a legal tender 'to a limited amount only, for the facility of exchange 'and commerce;' Be it therefore enacted, That from and after the passing of this act, the gold coin of this realm shall be and shall be considered and is hereby declared to be the only legal tender for payments (except as hereinafter provided) within the United Kingdom of *Great Britain* and *Ireland*; and that the said gold coin shall hold such weight and fineness as are prescribed by the present indenture with his Majesty's master and worker of the mint for making gold monies at his Majesty's mint in *London*, and with such allowance, called the remedy, as is given to the said master by the said indenture; which weight and fineness are hereby declared to be and shall remain to be the standard of and for the lawful gold coin of the realm, so far as relates to gold coins of the denominations at present in use, and specified in the said indenture; and in case any gold coin or coins of any other denomination shall hereafter be coined at the said mint under any future indenture, such gold coin and coins shall hold the like standard in fineness as the gold coins of the present denominations, and shall hold such weight as shall be proportionate to the weight of the present

gold coins, according to the value for which such gold coin or coins of any new denomination shall be declared to be current.

'XII. And whereas it is expedient that the silver coin 'of the realm should be a legal tender by tale, according 'to its denomination, to any amount not exceeding the 'sum of forty shillings;' Be it therefore enacted, That from and after such day as shall be for that purpose named in any proclamation, which at any time after the passing of this act shall be made and issued, by or on behalf of his Majesty, with the advice of his Majesty's privy council, so much and such parts of the act made in the fourteenth year of his present Majesty's reign, intituled *An Act to prohibit the Importation of Light Silver Coin of this Realm from Foreign Countries into Great Britain or Ireland, and to restrain the Tender thereof beyond a certain Sum*, as enacts or provides or may be construed to enact or provide, that any tender in silver coin of the realm shall be legal to the amount of twenty-five pounds or a tender for any greater sum, according to its value by weight, and also so much of any act and acts whereby the said last recited act is continued, revived or made perpetual, shall be, and the same is and are hereby repealed accordingly: And that from and after such day as shall be for that purpose named in any such proclamation to be made and issued as aforesaid, no tender of payment of money made in the silver coin of this realm, of any sum exceeding the sum of forty shilling at any one time, shall be reputed a tender in law, or allowed to be a legal tender within the United Kingdom of *Great Britain* and *Ireland*, either by tale or weight of such silver coin or otherwise howsoever; anything in the said recited act of the fourteenth year of his present Majesty's reign, or in any other act or acts in force immediately

before the passing of this act, or any usage or custom to the contrary in anywise notwithstanding."

56 Eng. Stat., 384-389.

The coinage laws of England were consolidated and amended by "The Coinage Act, 1870."

33 VICT., C. 10 (1870).

This act adopted a schedule of coins which we insert on another page.

Other important sections of the act are as follows:

4. A tender of payment of money, if made in coins which have been issued by the mint in accordance with the provisions of this act, and have not been called in by any proclamation made in pursuance of this act, and have not become diminished in weight, by wear or otherwise, so as to be of less weight than the current weight, that is to say, than the weight (if any) specified as the least current weight in the first schedule of this act, or less than such weight as may be declared by any proclamation made in pursuance of this act, shall be a legal tender,—

In the case of gold coins for a payment of any amount:

In the case of silver coins for a payment of an amount not exceeding forty shillings, but for no greater amount:

In the case of bronze coins for a payment of an amount not exceeding one shilling, but for no greater amount.

Nothing in this act shall prevent any paper currency which under any act or otherwise is a legal tender from being a legal tender.

6. Every contract, sale, payment, bill, note, instrument, and security for money, and every transaction, dealing, matter, anything whatever relating to money, or involving the payment of or the liability to pay any

ENGLISH COINAGE SCHEDULE OF 1870.

Denomination of Coin.	Standard Weight. Imperial Weight. Grains.	Standard Weight. Metric Weight. Grams.	Least Current Weight. Imperial Weight. Grains.	Least Current Weight. Metric Weight. Grams.	Standard Fineness.	Remedy Allowance. Weight per piece. Imperial Grains.	Remedy Allowance. Weight per piece. Metric Grams.	Remedy Allowance. Millesimal Fineness.
GOLD:								
Five Pound	616.37239	39.94028	612.50000	39.68935	Eleven-twelfths fine gold, one-twelfth alloy; or millesimal fineness 916.66.	1.00000	0.06479	0.002
Two Pound	246.54895	15.97611	245.00000	15.87574		0.40000	0.02592	
Sovereign	123.27447	7.98805	122.50000	7.93787		0.20000	0.01296	
Half Sovereign	61.63723	3.99402	61.12500	3.96083		0.10000	0.00648	
SILVER:								
Crown	436.36363	28.27590	.....	.....	Thirty-seven-fortieths fine silver, three-fortieths alloy; or millesimal fineness 925.	1.81818	0.11781	0.004
Half Crown	218.18181	14.13795	.....	.....		0.90909	0.05890	
Florin	174.54545	11.31036	.....	.....		0.72727	0.04712	
Shilling	87.27272	5.65518	.....	.....		0.36363	0.02356	
Sixpence	43.63636	2.82759	.....	.....		0.18181	0.01178	
Groat or Fourpence.	29.09090	1.88506	.....	.....		0.12121	0.00785	
Threepence	21.81818	1.41379	.....	.....		0.09090	0.00589	
Twopence	14.54545	0.94253	.....	.....		0.06060	0.00392	
Penny	7.27272	0.47126	.....	.....		0.03030	0.00196	
BRONZE:								
Penny	145.83333	9.44984	.....	.....	Mixed metal, copper, tin, and zinc.	2.91666	0.18899	None.
Halfpenny	87.50000	5.66990	.....	.....		1.75000	0.11339	
Farthing	43.75000	2.83495	.....	.....		0.87500	0.05669	

The weight and fineness of the coins specified in this Schedule are according to what is provided by the Act fifty-six George the Third, chapter sixty-eight, that the gold coin of the United Kingdom of Great Britain and Ireland should hold such weight and fineness as were prescribed in the then existing Mint indenture (that is to say), that there should be nine hundred and thirty-four sovereigns and one ten-shilling piece contained in twenty pounds weight troy of standard gold, of the fineness at the trial of the same of twenty-two carats fine gold and two carats of alloy in the pound weight troy; and further, as regards silver coin, that there should be sixty-six shillings in every pound troy of standard silver of the fineness of eleven ounces two pennyweights of fine silver and eighteen pennyweights of alloy in every pound weight troy.

money, which is made, executed, or entered into, done or had, shall be made, executed, entered into, done and had according to the coins which are current and legal tender in pursuance of this act, and not otherwise, unless the same be made, executed, entered into, done or had according to the currency of some British possession or some foreign state.

8. Where any person brings to the mint any gold bullion, such bullion shall be assayed and coined, and delivered out to such person, without any charge for such assay or coining, or for waste in coinage:

Provided that—

(1.) If the fineness of the whole of the bullion so brought to the mint is such that it cannot be brought to the standard fineness under this act of the coin to be coined thereout, without refining some portion of it, the master of the mint may refuse to receive, assay, or coin such bullion:

(2.) Where the bullion so brought to the mint is finer than the standard fineness under this act of the coin to be coined thereout, there shall be delivered to the person bringing the same such additional amount of coin as is proportionate to such superior fineness.

No undue preference shall be shown to any person under this section, and every person shall have priority according to the time at which he brought such bullion to the mint.

9. The treasury may from time to time issue to the master of the mint, out of the growing produce of the consolidated fund, such sums as may be necessary to enable him to purchase bullion in order to provide supplies of coin for the public service.

10. All sums received by the master of the mint, or any deputy master or officer of the mint, in payment for coin produced from bullion purchased by him, and all

fees and payments received by the master or any deputy master or officer of the mint as such, shall (save as otherwise provided in the case of any branch mint in a British possession by a proclamation respecting such branch mint) be paid into the receipt of the exchequer, and carried to the Consolidated Fund.

SUBSIDIARY COINAGE OF UNITED STATES.

The Act of June 28, 1834, established a mint ratio between silver and gold of 16.002 to 1. The Act of January 18, 1837, changed it to 15.988 to 1. As we have shown, gold was slightly over valued by these acts when compared with the commercial value of the two metals at that time. The discovery of the gold mines of California and Australia widened the discrepancy, and the silver and silver coins of the country became so valuable for exportation as a commodity that gold became the only actual standard of value, and sufficient silver coins could not be kept in the country for small change.

An official statement of the facts and of the inconvenience arising from the want of small coins, will be found in a memorial on the subject presented to Congress by the Legislature and Governor of New Jersey, February 15, 1853, the day that the Act of February 21, 1853, was passed by the House of Representatives. (26 Cong. Globe, 629.)

Andrew Johnson, of Tennessee, subsequently President of the United States, then a member of the House, ignoring the provision limiting the legal tender quality of the debased coin, made a strong argument against the bill, and insisted that provision should be made for the redemption of the silver coins in gold. (26 Cong. Globe, 475, 490, 491.)

C. L. Dunham, of Indiana, had charge of the bill in the House and made an elaborate speech in favor of it. Among other things, he said:

"This can be neither unjust to the Government, or to any citizen. Not to the Government, for it alone manufactures, and puts them in circulation. It should, therefore, as a matter of duty, maintain their credit, and as it cannot part with them without receiving their full nominal value, it should always be ready to retake them at that value. It is no hardship, because the Government will receive them at precisely what it will have paid them out. It can, therefore, suffer no loss. It can be no hardship upon the citizen, because, as it is entirely at his option whether he will take them from the Mint or not, he certainly will not take them unless they are worth to him their nominal value, the price at which he receives them. A nominal dollar of these coins must be worth a dollar in gold, for they must be worth the price they will bring, and as no one can get them from the mint, the sole manufactory, for less, and as the government will stand pledged to redeem them at that price, they must always bring it." (27 Cong. Globe, 190, 191.)

The actual debasement that took place was not as great as it, at the first blush, appears to have been. The pure silver in the prior silver coins was at the rate of 371.25 grains to the dollar. The new silver coins, below the dollar in denomination, were to contain 345.6 grains in a dollar of such coins, or a reduction of 25.65 grains, a trifle less than seven per cent. But the gold dollar being less in value than the silver dollar, was the actual standard of the times, the commercial ratio in 1853 being 15.33 to 1, or .658 less than the established mint ratio of 15.988 to 1. The mint ratio for the subsidiary coins was 14.883 to 1, or only .547 less than the commercial ratio. If their mint ratio had been precisely the same as the then commercial

ratio, the subsidiary coins would have contained 355.96 grains of pure silver, or 10.36 grains more than they were required to contain, showing a debasement, below the actual gold standard of that day, of a little less than three per cent. The avowed object of this reduction was to keep the subsidiary silver coins in the country; and to prevent them becoming the actual standard of value, their legal tender quality was limited to five dollars; and to avoid redundancy the government retained control of the amount to be issued.

It would be difficult to devise a more conservative and safe scheme for issuing coin, below the established standard in weight or fineness, yet it was put through Congress on the argument that the act would carry with it an implied promise on the part of the government to redeem these slightly debased coin in gold on demand.

The amount of pure silver in the subsidiary coins was increased by the Act of February 12, 1873, to 347.22 grains to the dollar, that being the number of grains of pure silver in 25 grams of standard silver. Soon after the resumption of specie payments, January 1, 1879, provision was made for the redemption of the subsidiary coins, and their legal tender quality was increased to sums not exceeding ten dollars. (See Act of June 9, 1879.)

SUBSIDIARY COINAGE IN OTHER COUNTRIES.

We are indebted to the special reports of George M. Weston, Secretary of the United States Monetary Commission of 1876, for the following summary of the subsidiary coinage system of the countries named. (See "Reports of Silver Commission of 1876," p. 194.)

We have transposed the different paragraphs so as to place them on their chronological order:

"Silver was adopted January 24, 1857, as the exclusive standard by all the German states, then including Austria. This was done by what is called the Vienna Coin Convention. This convention provided also for a subsidiary silver coinage, to be a tender for an amount not exceeding the value of the smallest coin of full weight and standard issued by the states respectively, and each state was bound to redeem these subsidiary coins in other coins of full weight and standard and having the capacity of unlimited legal tender."

"The subsidiary silver coinage of France, Italy, Belgium and Switzerland, constituting the Latin Union, is regulated by the convention between them of December 25, 1865. It is not under-weighted, but is below standard, being 835-1000 fine, whereas the standard of those countries is nine-tenths fine. It is made a legal tender to an amount not exceeding fifty francs, but only to the citizens of the country issuing it. This coinage of each country is made receivable for taxes in all countries comprising the Latin Union for any amount not exceeding one hundred francs; but in the country issuing it this receivability is 'without limitation of quantity.' And each country is obliged to redeem its subsidiary coins in coins of full standard, when presented in sums not less than one hundred francs, by either the governments or citizens of the other countries. The last provision remains in force for two years after the convention expires."

"In Spain, by a royal decree of October 19, 1868, a subsidiary silver coinage was provided 835-1000 fine, the Spanish standard being, like the French, nine-tenths fine. These subsidiary coins were made a tender for not exceeding fifty *pesetas* (about $9.30). But the decree adds that 'the state, however, will receive them from the taxpayers without limitation.'"

"The adoption of the single gold standard by the Scandinavian states, and the issue of silver coins as a tender for small sums, was arranged by a monetary treaty (December 18, 1872) between Sweden and Denmark, and by a law (June 1, 1873) of Norway. In both the treaty and the law it is provided that these coins shall be received for all taxes until they are so much worn that it cannot be seen by what country they are issued, and that they shall be redeemed in gold, when presented in any sum divisible by ten crowns. And this last provision is made also in respect to the bronze coins."

"The silver and other minor coins of Germany, which are tenders for only small sums under the new monetary regime of the single gold standard, are regulated by the law of July 16, 1873, article 9 of which directs that the silver coins shall be received at the treasuries of all the states and of the empire for all sums, and further directs that the Federal Council shall designate public treasuries where redemption shall be made in gold of silver coins when presented in sums not less than 200 marks (about $50), and of nickel and copper coins when presented in sums not less than fifty marks. Article 10 directs that pieces of silver, nickel and copper reduced by wear below weight shall be accepted for taxes at their nominal value at all public treasuries and be retired from circulation, and that the loss shall be borne by the empire."

"The law of Holland of 1875, providing (among other things) for subsidiary silver coins to be a tender for twenty florins (about $8) ,makes them receivable in any amount for all taxes. And it also provides that such coins, when presented in sums not less than fifty florins, and bronze coins when presented in sums not less than five florins, shall be redeemed by the government in gold, or in such silver coins as have the capacity of full legal tender."

Immediately preceding the above summary, Mr. Weston, referring to the subsidiary coins of the United States, says:

"Whatever their weight may be, they will be silver coins of the United States, and it is a scandalous and altogether inadmissible supposition that the government of this country will ever issue coins for the purposes of profit, the equality of which in market-value with all other coins it does not adequately secure, by limitation of quantity, redemption in other coins, receivability for taxes, or some other effective method. No government in Europe issues any such fraudulent coins, or would dare to do it. It is in small silver coins that the wages of labor are paid, and it is not to be assumed as possible that the government of this country will ever issue such coins without maintaining their full value."

IV.

For over twenty years the government itself has treated the legal tender provision of the Bland-Allison Act as unconstitutional and void, and as this practical construction of the constitution is in accord with the original and true meaning of that instrument it should now be authoritatively declared and decreed by the Supreme Court of Michigan, and by the Supreme Court of the United States, in their judgments in this case.

The Executive branch of the government without objection from, or the disapproval of, the legislative branch, has prevented the silver dollar from becoming the actual standard of value, with gold at a premium; and it has likewise prevented the silver dollar from becoming current at a discount. The government has accomplished this by accepting silver dollars, and their paper repre-

sentatives—the silver certificates—as a full and unlimited legal tender in all payments to the government, and by refusing to use them as a legal tender in payments by the government.

There being nothing in the Bland-Allison Act on which to base an implied promise on the part of the government to redeem the silver dollars in gold, the Secretary of the Treasury has repeatedly announced that they were not in law redeemable and that his department did not redeem them. The only redemption of silver dollars maintained by the government is the practical redemption arising from their receivability by the Treasury in payments to the government. This feature, coupled with the practice of the Treasury not to make any use of silver dollars, or silver certificates, as an obligatory legal tender in payments by the government, not even in cases where the promise of the government is by the express terms of the contract payable in "coin," as distinguished from "gold," has kept the silver dollar at a parity with the gold dollar. It is said that the lamented Daniel Manning, when Secretary of the Treasury, did stop one raid on the Treasury for gold by threatening to redeem United States Treasury notes with silver dollars; but beyond this threat every administration since 1878 has persistently and obstinately refused to exercise the option sacredly reserved by congress to the government and the people, of paying either in gold or silver. On the contrary, it has been officially given out that the Treasury Department would permit the public creditor to determine—to exercise the option—whether he should be paid in silver dollars or in gold dollars. It is doubtful whether in all the history of England and America since the English revolution of 1688, there has been a more extraordinary and unwarranted exercise of power by the Executive either of England or of the United States. Be that as it may, the

power to surrender the government's option has been exercised, and the policy thus inaugurated has been continued until the valuation of all the property in the country; the basis of nearly all contracts, public or private, whether expressly payable in gold or not; and the most important element in all business transactions—the money consideration—have become adjusted to the gold dollar with a commercial value or purchasing power more than twice as large as that of the silver in the silver dollar. The process of adjustment has been long, expensive for both government and people, and disastrous to millions of men and families. It has greatly enriched the creditor and money-lending classes at the expense of debtors and producers. It has changed the conditions and methods of American business, and retarded and obstructed the progress of American civilization; but these results have been accomplished; they are here; and if the Executive Department of the government should now reverse its policy, and force the country to adjust itself to the silver dollar as the measure of value, as great a wrong, would be perpetrated, as was inflicted upon the people by the original determination of the executive to surrender to the public creditor, the option, the national legislature had carefully and explicitly reserved to the government for its own protection, and the protection of the millions of people subject to its jurisdiction.

The legislative power of the government of the United States is vested in Congress, and by the express mandate of the constitution, this includes the power to coin money and the power to borrow money.

The English people struggled for several centuries to establish the doctrine that no taxes could be levied in England without the consent of the House of Commons, and to make it very sure the doctrine would not be vio-

lated in the practice of the government, English army appropriations are made for one year only, so as to require annual sessions of Parliament. These principles were incorporated into the constitution of the United States by the provisions that all revenue bills shall originate in the House of Representatives, and that army appropriations shall be made for two years only. The change from one to two years was made to meet the periodical sessions of Congress fixed by the constitution.

The American executive never has had either the power to coin money or the power to borrow money. These powers are conferred upon Congress, and they cannot, constitutionally, be turned over to the President or his subordinate executive officers. Yet, since 1878, the President and his financial secretary have exercised a discretion by which they have kept the country on the gold standard in spite of the Bland-Allison Act and the Sherman silver law; and one presidential campaign has been conducted on the theory that if a friend of silver was placed in the executive chair he could put the country on a silver basis without any affirmative action by congress by simply paying the public obligations with silver dollars and silver certificates instead of gold. Ex-President Harrison, in a speech in New York during the campaign of 1896, called attention to this as one of the results certain to be reached if Mr. Bryan was elected; but the ex-President did not refer to the fact that during his own administration the Hon. Charles Foster, his Secretary of the Treasury, became conspicuous for his ruling that the option, whether the government should pay in gold or silver, was to be exercised by the public creditor and not by the government. We refer to this solely for the purpose of showing that in some way the power to determine whether we shall have a gold standard or a silver stand-

ard, has passed from the national legislature to the national executive.

No one reasonably familiar with the parliamentary history of England prior to the adoption of the constitution of the United States will deny the truth of the proposition that any such exercise of discretion by the President of the United States is in violation of that division of the powers of government which constitutes the most fundamental feature of the constitution of the United States.

It is certain that any legislation which permits, even temporarily, such a transfer of power from the legislature to the chief magistrate, must at some point or place, or in some particular, be in conflict with the constitution.

We have given the subject the most careful and deliberate consideration of which we are capable, and we insist, with a great deal of confidence in the truth of our position, that the infirmity in the coinage legislation of Congress is to be found in the constitutional monstrosity, known as the Bland-Allison Act.

That act is neither one thing or the other; it is neither gold or silver; it restores to the silver dollar its full legal tender character, but it permits contracts containing express stipulations against it; it provides for the coinage of silver dollars, but limits such coinage to two millions a month; it allows the government to make a large profit, or net seigniorage on the silver purchased, but does not require the government to redeem the silver dollars in gold; and it purports to restore bimetallism, but does not repeal the prior statute making the gold dollar the "unit of value."

The views we have expressed relative to the maintenance of gold payments by executive discretion are corroborated by another feature of the situation brought out during the second administration of President Cleve-

land. The Act of January 14, 1875, for the resumption, January 1, 1879, of specie payments, authorized an issue of bonds payable in "coin." No limit was placed upon the amount of the issue except that it was to be "to the extent necessary to carry this act into full effect."

Before it was necessary to borrow any coin under the act the outstanding Treasury notes to be redeemed were reduced to $346,681,016. If gold to redeem all of them had been borrowed the bond issue could not have exceeded this sum.

This was the practical limitation Congress put upon the proposed issue of bonds, and properly construed, it was just as effective and binding as if the amount had been stated in the act. As a matter of fact, the Treasury Department, with the other means at its disposal, only found it necessary to issue bonds to the amount of $95,500,000 in order to resume specie payments January 1, 1879, and to carry the resumption act "into full effect." One would naturally suppose that this exhausted the power conferred and that the act became obsolete. The nature of the power of Congress to borrow money and of the authority delegated to the Treasury Department seem to compel this construction of the act.

During the second administration of President Cleveland, deficiencies in the public revenues, and a large demand for gold for exportation, reduced the gold in the Treasury so low that a suspension of gold payments and a resort to silver payments seemed to be inevitable. In this emergency the executive did not hesitate to issue bonds under the resumption act, although practically the bonds were issued to meet the deficiencies in the income of the government. Under the constitution, affirmative action on the part of Congress is necessary to authorize a borrowing of money for any purpose. Inaction, or a want of action, on the part of Congress is a different

thing than affirmative action; and if the executive could be vested with a discretionary power to borrow money whenever he thought it was needed, until he was stopped by Congress, by a resolution or bill passed with his approval or over his veto by a two-thirds vote of each house, he would be independnt of Congress, and our system of government would become that of an elective monarchy. Congressional or parliamentary government would be at an end.

It is obvious that neither the constitution of England, or the constitution of the United States, contemplate any such thing. If legislation conferring any such discretion on the President can be sustained, he could rule without any sessions of Congress, or if sessions were held, without any action by Congress. It is seldom that an administration cannot control a third of one or both Houses of Congress, and if the expenses of the Government can be met by loans, pending legislation by Congress, the President will have a power beyond anything intended by the constitution.

The bonds issued during the last administration of President Cleveland, together with those originally issued under the redemption act, are a handsome sum in excess of the total amount of outstanding United States Treasury notes; and yet not a single one of those notes has been redemed and retired. If the power to borrow money under the resumption act is a continuing, never ending power, the endless chain can be kept going forever, and the President be thus given an undue and, as we submit, an unconstitutional advantage or influence, over Congress, in all future monetary legislation.

The powers of the President of the United States are ample without increasing them beyond the limits prescribed by the constitution. If the legal tender provision of the Bland-Allison Act is valid, and the government